

OREGON BULLETIN

Supplements the 2017 Oregon Administrative Rules Compilation

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Secretary of State
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INFORMATION ABOUT ADMINISTRATIVE RULES

General Information

The Administrative Rules Unit, Archives Division, Secretary of State publishes the Oregon *Administrative Rules Compilation* and the online *Oregon Bulletin*. The *Oregon Administrative Rules Compilation* is an annual print publication containing complete text of Oregon Administrative Rules (OARs) filed through November 15 of the previous year. The *Oregon Bulletin* is a monthly online supplement that contains rule text adopted or amended after publication of the print Compilation, as well as Notices of Proposed Rulemaking and Rulemaking Hearing. The Bulletin also includes certain non-OAR items when they are submitted, such as Executive Orders of the Governor, Opinions of the Attorney General and Department of Environmental Quality cleanup notices.

Background on Oregon Administrative Rules

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

OAR Citations

Every Administrative Rule uses the same numbering sequence of a three-digit chapter number followed by a three-digit division number and a four-digit rule number (000-000-0000). For example, Oregon Administrative Rules, chapter 166, division 500, rule 0020 is cited as OAR 166-500-0020.

Understanding an Administrative Rule’s “History”

State agencies operate in an environment of ever-changing laws, public concerns and legislative mandates which necessitate ongoing rulemaking. To track changes to individual rules and organize the original rule documents for permanent retention, the Administrative Rules Unit maintains history lines for each rule, located at the end of the rule text. OAR histories contain the rule’s statutory authority, statutes implemented and dates of each authorized modification to the rule text. Changes are listed chronologically in abbreviated form, with the most recent change listed last. In the history line “OSA 4-1993, f. & cert. ef. 11-10-93,” for example, “OSA” is short for Oregon State Archives; “4-1993” indicates this was 4th administrative rule filing by the Archives in 1993; “f. & cert. ef. 11-10-93” means the rule was filed and certified effective on November 10, 1993.

Locating Current Versions of Administrative Rules

The online version of the OAR Compilation is updated on the first of each month to include all rule actions filed with the Administrative Rules Unit by the 15th of the previous month. The annual printed OAR Compilation volumes contain text for all rules filed through

November 15 of the previous year. Administrative Rules created or changed after publication in the print Compilation will appear in a subsequent edition of the online Bulletin. These are listed by rule number in the Bulletin’s OAR Revision Cumulative Index, which is updated monthly. The listings specify each rule’s effective date, rule-making action, and the issue of the Bulletin that contains the full text of the adopted or amended rule.

Locating Administrative Rule Publications

Printed volumes of the Compilation are deposited in Oregon’s Public Documents Depository Libraries listed in OAR 543-070-0000. Complete sets and individual volumes of the printed OAR Compilation may be ordered from the Administrative Rules Unit, Archives Division, 800 Summer Street NE, Salem, Oregon 97301, (503) 373-0701.

Filing Administrative Rules and Notices

All hearing and rulemaking notices, and permanent and temporary rules, are filed through the Administrative Rules Unit’s online filing system. To expedite the rulemaking process, agencies are encouraged to file a Notice of Proposed Rulemaking Hearing specifying hearing date, time and location, and to submit their filings early in the submission period. All notices and rules must be filed by the 15th of the month to be included in the next month’s Bulletin and OAR Compilation postings. Filings must contain the date stamp from the deadline day or earlier to be published the following month.

Administrative Rules Coordinators and Delegation of Signing Authority

Each agency that engages in rulemaking must appoint a rules coordinator and file an Appointment of Agency Rules Coordinator form with the Administrative Rules Unit. Agencies that delegate rule-making authority to an officer or employee within the agency must also file a Delegation of Rulemaking Authority form. It is the agency’s responsibility to monitor the rulemaking authority of selected employees and keep the forms updated. The Administrative Rules Unit does not verify agency signatures as part of the rulemaking process.

Publication Authority

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

The official copy of an Oregon Administrative Rule is contained in the Administrative Order filed at the Archives Division. Any discrepancies with the published version are satisfied in favor of the Administrative Order.

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OTHER NOTICES

REQUEST FOR COMMENTS PROPOSAL TO SEEK PUBLIC COMMENT BY OREGON DHS AND OHA ON AMENDED STATEWIDE TRANSITION PLAN

COMMENTS DUE: July 17, 2017

BACKGROUND & PROPOSAL: In 2014, the Centers for Medicare & Medicaid Services (CMS) issued new rules to define community and home-based services. Service providers have to adhere to these rules in order to become eligible for Medicaid payments from the state. In return, the state receives federal matching funds only if the service setting is in compliance with these regulations issued by CMS. Initially, CMS gave states up to five years to comply (2019 deadline) but recently extended the deadline to 2022. This is important to the State of Oregon and the citizens who benefit from these services, because approximately 70 percent of payments for Medicaid Home and Community-Based Services (HCBS) are covered by those federal matching funds.

After receiving initial CMS approval, the Oregon Department of Human Services (Oregon DHS) and the Oregon Health Authority (OHA) drafted a revision to the transition plan outlining how the state will come into compliance with the federal rules within the new CMS timeframes. The state is seeking final CMS approval for Oregon's plan.

Oregon is considered a national leader in creating home and community-based care options. The state wants to maintain a high level of independence for citizens who currently receive HCBS or may require them in the future. Oregon DHS and OHA are looking for input from individuals receiving HCBS, family members, advocates, providers, delivery systems representatives and the broader community.

The new CMS rules require HCBS settings to be more home-like and less institutionalized.

The new rules require a better recognition and assurance of service recipient's rights and freedoms. This includes the right to have visitors at a time they choose, have access to their own food when they wish, or lock the door to their room, if they so choose. The existing HCBS settings may need to make adjustments. The purpose of the rules is to ensure that HCBS recipients can seek employment and work in competitive and integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree as individuals who do not receive HCBS.

All of Oregon's providers of HCBS have gone through an assessment to determine their compliance. Out of all these facilities, nineteen were identified as requiring heightened federal scrutiny. Heightened Scrutiny is a federal term that means that CMS will make the final determination of HCBS compliance as the setting presumably is institutional based on CMS criteria. Oregon believes these settings can overcome this presumption as detailed in the plan.

Oregon DHS and OHA are seeking public comment on the amended plan, which has been posted online at: <http://www.oregon.gov/DHS/SENIORS-DISABILITIES/HCBS/Pages/Transition-Plan.aspx>

Non-electronic versions of the Statewide Transition Plan are posted in local field offices and may also be viewed at the Human Services Building at 500 Summer Street NE in Salem.

REQUEST FOR COMMENTS: All individuals receiving HCBS services, family members, advocates, providers, delivery system representatives and the broader community are asked to review the Statewide Transition Plan and Heightened Scrutiny evidence packages and submit their comments to assist DHS and OHA in achieving final approval of the plan.

The purpose of the HCBS settings regulations is to ensure that individuals receive Medicaid HCBS in settings that are integrated in and support full access to the greater community. This includes opportunities to seek employment and work in competitive and integrated settings, engage in community life, control personal resources, and receive services in the community, to the same degree as individuals who do not receive HCBS.

ADDITIONAL INFORMATION LOCATED AT: <https://www.oregon.gov/DHS/SENIORS-DISABILITIES/HCBS/Pages/Transition-Plan.aspx>

DEADLINE FOR COMMENTS: Deadline for comments is July 17, 2017. Mailed responses must be received by this date in order to be considered.

HOW TO COMMENT: Please submit comments in one of these methods: Send an email to hcbs.oregon@state.or.us or send written comments addressed to HCBS Transition Plan Comments, 500 Summer Street NE E-09, Salem, OR 97301.

NEXT STEPS: OHA and DHS will consider all comments received. The final amended Statewide Transition Plan is due to CMS by August 1, 2017.

REQUEST FOR COMMENTS PROPOSED PROSPECTIVE PURCHASER AGREEMENT FOR BLUE LAKE CORPORATE PARK

COMMENTS DUE: Monday July 31, 2017

Project location: Blue Lake Corporate Park; NE Riverside Parkway, Gresham OR, 97230

PROPOSAL: The Department of Environmental Quality seeks comments on its proposed consent order for a prospective purchaser agreement with Blue Lake Corporate Park, LLC concerning its acquisition of real property located at the eastern end of NE Riverside Parkway Gresham, Oregon (Property). The property proposed for acquisition is an approximately 41.6 acre site consisting of tax lots 100, 999, 1200 and 1300. The applicant proposes to develop the property for general industrial uses consistent with City of Gresham zoning requirements.

The property has been in agricultural production since approximately 1918. Residual agricultural pesticides were found in onsite soils and sediment. Petroleum stained soil was found at the equipment fueling area in the NE area of the property and petroleum sheen from an unknown source was observed in the surface water ditch. Surface water is pumped by Multnomah County Drainage District and discharged into the Columbia Slough.

Under the proposed scope of work, Blue Lake Corporate Park, LLC will:

- Prepare a contaminated media management plan
- Evaluate the source of the surface water sheen; correct or remove any onsite source
- Determine if groundwater is expected to be used onsite; if so develop work plan to evaluate if restrictions or treatment may be required
- Document site stormwater management to ensure consistency and encourage onsite infiltration
- Contribute \$60,000 to the Columbia Slough sediment investigation and remediation cleanup fund

DEQ created the prospective purchaser agreement program in 1995 through amendments to the state's Environmental Cleanup Law. The prospective purchaser agreement is a tool that expedites the cleanup of contaminated property and encourages property transactions that would otherwise not likely occur because of the liabilities associated with purchasing a contaminated site.

The proposed consent order will provide Blue Lake Corporate Park, LLC with a release from liability for claims by the State of Oregon under ORS 465.200 to 465.545 and 465.990, 466.640, and 468B.310 regarding existing hazardous substance releases at or from the property. The proposed consent order will also provide Blue Lake Corporate Park, LLC with third party liability protection.

HOW TO COMMENT: Send comments to DEQ Project Manager Sarah Miller at 700 NE Multnomah St. Suite 600, Portland, Oregon 97323 or miller.sarah@deq.state.or.us For more information contact the project manager at 503-229-5040.

Request DEQ project file review.

File review (records request) application form

Access site summary information and other documents in the DEQ Environmental Cleanup Site Information database, select "Search complete ECSI database," then enter 6189 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled

OTHER NOTICES

ECSI #6189 in the Site ID/Info column. Alternatively, you may go directly to the database website for this page at: <http://www.deq.state.or.us/lq/ECSI/ecsidetail.asp?seqnbr=6189>

If you do not have web access and want to review the project file contact the DEQ project manager.

THE NEXT STEP: DEQ will consider all public comments received by the date and time stated above before making a final decision regarding the proposed remedial actions taken at the site. Accessibility information: DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, call DEQ at 503-229-5696 or toll free in Oregon at 800-452-4011; fax to 503-229-6762; or email to deqinfo@deq.state.or.us. People with hearing impairments may call 711.

PUBLIC NOTICE PROPOSED CONSENT JUDGMENT WITH FERGUSON IN PORTLAND, OREGON

COMMENTS DUE: 5 p.m., July 30, 2017

PROJECT LOCATION: 9208 and 9129 N Tyndall Ave., Portland, OR

PROPOSAL: The Department of Environmental Quality proposes to enter into a consent judgment with Ferguson Enterprises, Inc. The Consent Judgment documents Ferguson's efforts to address source control at their site and includes settlement of Ferguson's potential liability for contribution to sediment contamination in the Columbia Slough and associated State of Oregon natural resource damages.

HIGHLIGHTS: Ferguson has used the site for sale and distribution of geosynthetic products (e.g. pipes) since 1996. Prior to that the site was used as a slaughter house by Schlessler Brothers and Armour and Company. Investigations beginning in 2012 identified PCB contamination at the site associated with degrading caulk present in the joints of a concrete pad installed at the site by the previous owners. In 2015, Ferguson removed the concrete pad, underlying soil and gravel, and isolated areas of soil contamination. In conjunction with this action Ferguson regraded the site and installed a new stormwater system which directs all facility stormwater to a treatment system prior to discharge to the Columbia Slough.

Under the proposed Consent Judgment, Ferguson would pay DEQ \$350,000 in exchange for a release from liability for the site's potential contribution to sediment contamination in the Columbia Slough and associated natural resource damages. DEQ would place \$300,000 of this into an account that will be used for investigation and cleanup of contaminated sediment in the Columbia Slough and \$50,000 into an account used for habitat enhancement projects in the Columbia Slough watershed. The liability release is effective once the payments have been made and DEQ determines that upland source control actions at the site are complete.

HOW TO COMMENT: Send comments to DEQ Project Manager Jennifer Sutter at 700 NE Multnomah St. Suite #600 Portland, Oregon 97232 or sutter.jennifer@deq.state.or.us For more information contact the project manager at 503-229-6148.

TRANSLATIONS & ACCOMMODATIONS: To request information in another language or format, call DEQ in Portland at 503-229-5696, or toll-free in Oregon at 1-800-452-4011, ext. 5696; or email deqinfo@deq.state.or.us.

To access site summary information and other documents in the DEQ Environmental Cleanup Site Information database, go to <https://www.oregon.gov/deq/Hazards-and-Cleanup/env-cleanup/Pages/ecsi.aspx>, select "Search complete ECSI database", then enter ECSI#5455 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled ECSI #5295 in the Site ID/Info column. Alternatively, you may go directly to the database website for this page at <http://www.deq.state.or.us/Webdocs/Forms/Output/FPCcontroller.ashx?SourceIdType=11&SourceId=5455&Screen=Load>

Find information about requesting a review of DEQ project files at: <http://www.oregon.gov/deq/about-us/Pages/Request-Public-Record.aspx>

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

REQUEST FOR COMMENTS PROPOSED SOURCE CONTROL DECISION FOR EVRAZ OREGON STEEL SHORELINE

COMMENTS DUE: 5 p.m., Monday, July 31, 2017

PROJECT LOCATION: 14400 N Rivergate Ave., Portland, OR

PROPOSAL: Consistent with ORS 465.325(10)(a), DEQ is proposing to issue a determination that, with the exception of long-term monitoring and maintenance, shoreline source control has been completed at the site. The site, located on the Willamette River at approximately river mile 2, has been used for steel production since 1967.

HIGHLIGHTS: Polychlorinated biphenyls and metals were present at elevated concentrations on the shoreline as a result of placing slag-soil fill in this area in the late 1960's to early 1970's. In the summer and fall 2015, Evraz Oregon Steel implemented the shoreline source control remedy selected in DEQ's 2014 Record of Decision. The action included excavating contaminated soil, slag-soil fill, and upper beach material; constructing a cap/armoring layer along the bank consisting of a geotextile layer, a 1-foot thick layer of gravel, and a 3-foot thick layer of armor stone; and restoring the upper beach through placement of rounded well-graded river rock. Both the upper beach and the reconstructed berm on top of the bank were densely planted with native trees and shrubs following construction to improve habitat and provide additional stabilization.

HOW TO COMMENT: Send comments to DEQ Project Manager Jennifer Sutter at DEQ's Northwest Region, 700 NE Multnomah St., Suite #600, Portland, OR 97232 or sutter.jennifer@deq.state.or.us. For more information contact the project manager at (503) 229-6148.

Find information about requesting a review of DEQ project files at: <https://www.oregon.gov/deq/about-us/Pages/Requesting-Public-Records-FAQ.aspx>

Find the File Review Application form at: <https://www.oregon.gov/deq/about-us/Pages/Requesting-Public-Records-Form.aspx>.

To access site summary information and other documents in the DEQ Environmental Cleanup Site Information database, go to <http://www.deq.state.or.us/lq/ECSI/ecsiquery.asp>, select "Search complete ECSI database", then enter 141 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 141 in the Site ID/Info column. Alternatively, you may go directly to the database website for this page at <http://www.deq.state.or.us/Webdocs/Forms/Output/FPCcontroller.ashx?SourceId=141&SourceIdType=11>.

If you do not have web access and want to review the project file contact the DEQ project manager.

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

ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, call DEQ at 503-229-5696 or toll free in Oregon at 800-452-4011; fax to 503-229-6762; or email to deqinfo@deq.state.or.us. People with hearing impairments may call 711.

PUBLIC NOTICE PROPOSED FINAL REMEDY FOR THE WIRFS PROPERTY IN PORTLAND

COMMENTS DUE: 5 p.m., Monday, July 31, 2017

PROJECT LOCATION: 3720 NW Yeon Ave., Portland

OTHER NOTICES

PROPOSAL: DEQ is recommending approval of a final remedy for the Wirfs Property in the Northwest Industrial area of Portland. The final remedial action will include the recording of development restrictions and a written plan to manage contaminated groundwater at the site.

HIGHLIGHTS: An industrial building was constructed at the site in 1948 and was originally used for battery manufacturing and chemical formulation. Since 2000 the building has been used as a storage warehouse. Investigations have identified a small, highly concentrated plume of chlorinated solvents in the groundwater beneath an open yard at the south end of the site. DEQ is proposing to restrict the construction or expansion of buildings in the yard, and to require a written plan to protect future workers who may contact groundwater in the yard.

HOW TO COMMENT: Send comments to DEQ Project Manager Kevin Dana at 700 NE Multnomah St., Suite 600, Portland, OR, 97232-4100 or dana.kevin@deq.state.or.us. For more information contact the project manager at 503-229-5369.

Find information about requesting a review of DEQ project files at: <http://www.oregon.gov/deq/about-us/Pages/Request-Public-Record.aspx>

Find the File Review Application form at: <http://www.oregon.gov/deq/about-us/Pages/Requesting-Public-Records-Form.aspx>

To access site summary information and other documents in the DEQ Environmental Cleanup Site Information database, go to <http://www.oregon.gov/deq/Hazards-and-Cleanup/env-cleanup/Pages/ecsi.aspx>, select "Search complete ECSI database", then enter 2424 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 2424 in the Site ID/Info column. Alternatively, you may go directly to the database website for this page at <http://www.deq.state.or.us/Webdocs/Forms/Output/FPCController.aspx?SourceId=2424&SourceIdType=11>.

If you do not have web access and want to review the project file contact the DEQ project manager.

THE NEXT STEP: DEQ will consider all public comments received by the close of the comment period before selecting a final remedy for the site.

ACCESSIBILITY INFORMATION: Documents can be provided upon request in an alternate format for individuals with disabilities or in a language other than English for people with limited English skills. To request a document in another format or language, call DEQ in Portland at 503-229-5696, or toll-free in Oregon at 1-800-452-4011, ext. 5696; or email deqinfo@deq.state.or.us.

PUBLIC NOTICE PROPOSED FINAL REMEDIAL ACTION FOR NORTHSTAR

COMMENTS DUE: 5 p.m. July 31, 2017

PROJECT LOCATION: Northstar Development: Kale Road, Tax Lots 200, 701, 800, 900, and 1000 Map 062W32C in Salem, Marion County

PROPOSAL: The Oregon Department of Environmental Quality is recommending approval of a final remedy for the Northstar Development site to address residual pesticide contamination in soil from past agriculture practices. The final remedial action will include the removal and offsite disposal of soil impacted with pesticides above DEQ's risk standards.

HIGHLIGHTS: The site has been farmed since the 1890s. Row crops were grown in the earlier years and grass and grain crops in more recent years. Strawberries were grown on tax lot 900 in the 1950s and 1960s. The current property owner, Granada Land Company, plans to build a residential and urban residential development known as Northstar on the site.

Dieldrin, an insecticide, has been found in soils from the surface to 30 inches below ground at levels above DEQ's risk standards for residential ingestion, skin contact and inhalation. The property owner proposes to excavate and remove all soils above this standard prior to development. It is estimated that approximately 152,000 cubic yards of soil will be removed from the site and transported by covered trucks to a nearby farm for disposal. The transport route is

approximately 5.3 miles via Hazelgreen Rd NE, continuing west to Chemawa Road/Lockhaven Dr, and north on Windsor Island Road. The final disposal site is agriculture land located at 6848 Windsor Island Rd in Keizer, Oregon, Marion County map and tax lot 063W28D 00300. The soil will be used to fill in two dry, abandoned quarries on the property and then incorporated into the routine farming practices. A deed notice will be placed on the property to document and restrict residential use in the agriculture waste disposal area until the dieldrin levels are reduced to acceptable concentrations.

HOW TO COMMENT: Send comments to DEQ Project Manager Nancy Sawka at 4026 Fairview Industrial Drive, Salem, Oregon 97302 or sawka.nancy@deq.state.or.us. For more information contact the project manager at 503-378-5075.

Find information about requesting a review of DEQ project files at: <http://www.oregon.gov/deq/about-us/Pages/Requesting-Public-Records-FAQ.aspx>

Find the File Review Application form at: <http://www.oregon.gov/deq/about-us/Pages/Requesting-Public-Records-Form.aspx>

To access site summary information and other documents in the DEQ Environmental Cleanup Site Information database, go to <http://www.oregon.gov/deq/Hazards-and-Cleanup/env-cleanup/Pages/ecsi.aspx> select "Search complete ECSI database", then enter 6036 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 6036 in the Site ID/Info column.

If you do not have web access and want to review the project file contact the DEQ project manager.

THE NEXT STEP: All comments received by 5 pm on July 31, 2017, will be addressed. Once comments are adequately addressed, DEQ may approve, modify or deny the proposed remedial action.

ACCESSIBILITY INFORMATION: Documents can be provided upon request in an alternate format for individuals with disabilities or in a language other than English for people with limited English skills. To request a document in another format or language, call DEQ in Portland at 503-229-5696, or toll-free in Oregon at 1-800-452-4011, ext. 5696; or email deqinfo@deq.state.or.us.

PROPOSED PROSPECTIVE PURCHASER AGREEMENT FOR FORMER ALBERTSON'S SITE

COMMENTS DUE: 5 p.m., Monday, July 31, 2017

PROJECT LOCATION: 1300 SW Court Ave., Pendleton

PROPOSAL: The Department of Environmental Quality seeks comments on its proposed consent judgment for a prospective purchaser agreement with the Pendleton Round-up Association concerning its acquisition of real property located at 1300 SW Court Ave. in Pendleton, Oregon (Property)

The site has been developed since at least the 1920s. Past uses include a road maintenance facility and a farm equipment and supply store and service facility. The current building was built in 1972 for retail use. During the 1998 remodeling of the site building, pesticides and petroleum contamination in soil and/or groundwater were reported to DEQ.

The Pendleton Round-up Association will complete cleanup actions at the property by recording and implementing long term engineering controls. The existing building will be remodeled and repurposed to contain exhibits related to the Pendleton Round-Up Rodeo. The repurposing of this property will result in substantial public benefit by providing employment and educational opportunities for the community.

DEQ created the prospective purchaser agreement program in 1995 through amendments to the state's Environmental Cleanup Law. The prospective purchaser agreement is a tool that expedites the cleanup of contaminated property and encourages property transactions that would otherwise not likely occur because of the liabilities associated with purchasing a contaminated site.

The proposed consent judgment will provide the Pendleton Round-up Association with a release from liability for claims by the State of Oregon under ORS 465.200 to 465.545 and 465.990, 466.640, and 468B.310 regarding existing hazardous substance releases at or from the property. The proposed consent judgment will also provide the Pendleton Round-up Association with third party liability protection.

OTHER NOTICES

HOW TO COMMENT: Send comments by 5 p.m., July 31, 2017, to DEQ Project Manager Katie Robertson by phone at 541-278-4620, by mail at 800 SE Emigrant, Suite 330, Pendleton, OR 97801, by email at robertson.katie@deq.state.or.us or by fax at 541-278-0168. To access site summary information and other documents in DEQ's Environmental Cleanup Site Information database, go to <http://www.oregon.gov/deq/pages/index.aspx>, under the "Hazards and Cleanup" section, select "Environmental Cleanup Site Information Database" select "Search complete ECSI database", then enter 2208 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 2208 in the Site ID/Info column. If you do not have web access and want to review the project file contact the DEQ project manager.

THE NEXT STEP: DEQ will consider all public comments received before making a final decision on the proposed consent judgment. DEQ will provide written responses to all public comments received.

ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, call DEQ at 503-229-5696 or toll free in Oregon at 800-452-4011; fax to 503-229-6762; or email to deqinfo@deq.state.or.us. People with hearing impairments may call 711.

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 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. 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.*

Board of Examiners for Engineering and Land Surveying Chapter 820

Rule Caption: Increase license application and renewal fees for professional engineers, professional land surveyors, and professional photogrammetrists.

Date: 9-12-17 **Time:** 1 p.m. **Location:** 670 Hawthorne Ave. SE, Suite 220 Salem, OR

Hearing Officer: Shelly Duquette
Stat. Auth.: ORS 670.310, 672.153, 672.155, & 672.255
Stats. Implemented: ORS 672.002-672.2325
Proposed Amendments: 820-010-0505, 820-080-0005
Last Date for Comment: 9-12-17, Close of Hearing

Summary: OAR 820-010-0505 - The proposed amendments increase the biennial renewal rate for professional engineers, professional land surveyors, and registered professional photogrammetrists from \$150.00 every two years to \$190.00 every two years.

OAR 820-080-000 - The proposed amendments increases the fee schedule for: the registration application fee and biennial renewal fees. The registration application fee increases from \$360.00 to \$400.00. This applies to applications for registration as a professional engineer, professional land surveyor, or professional photogrammetrist. The biennial renewal fees for professional registrants increase from \$150.00 every two years to \$190.00 every two years. The proposed amendments also takes into consideration the application fee for professional registration in a newly established branch of engineering, land surveying, or photogrammetric mapping (as allowed by ORS 672.153).

Rules Coordinator: Jenn Gilbert
Address: Board of Examiners for Engineering and Land Surveying, 670 Hawthorne Ave. SE, Suite 220, Salem, OR 97301
Telephone: (503) 934-2107

Board of Licensed Professional Counselors and Therapists Chapter 833

Rule Caption: Renewal fee increase for registered interns and active status licensees.

Date: 7-24-17 **Time:** 10 a.m. **Location:** 3218 Pringle Rd. SE Salem, OR 97302

Hearing Officer: LaReé Felton
Stat. Auth.: ORS 675.705-675.835
Other Auth.: SB 5513 (2017)
Stats. Implemented: ORS 675.785(3)
Proposed Amendments: OAR 833-070-0011
Proposed Repeals: OAR 833-070-0011(T)
Last Date for Comment: 7-24-17, 5 p.m.

Summary: This amendment changes the annual renewal fee for registered interns from \$80 to \$120, and changes the annual renewal fee for active status licensees from \$125 to \$165.

Rules Coordinator: LaReé Felton
Address: Board of Licensed Professional Counselors and Therapists, 3218 Pringle Rd. SE, Suite 120, Salem, OR 97302
Telephone: (503) 373-1196

Rule Caption: Licensure application; examination requirements.

Date: 7-24-17 **Time:** 10 a.m. **Location:** 3218 Pringle Rd. SE Salem, OR 97302

Hearing Officer: LaReé Felton
Stat. Auth.: ORS 675.705-675.835
Stats. Implemented: ORS 675.715, 675.735, 675.745, & 675.785
Proposed Amendments: 833-020-0011, 833-020-0081
Last Date for Comment: 7-24-17, 5 p.m.

Summary: The proposed amendment clarifies that, for purposes of completing an application file for approval within one year of receipt, documentation of experience qualifications may not apply to applicants who have not yet completed any experience. Those applicants will complete supervised experience as part of their registered internship, after the application is approved. The proposal modifies the requirement that an application is automatically denied after three competency examination failures so that it will only apply to registered interns once they have completed the experience requirements for licensure. It also reorganizes the examination requirements for clarity.

Rules Coordinator: LaReé Felton
Address: Board of Licensed Professional Counselors and Therapists, 3218 Pringle Rd. SE, Suite 120, Salem, OR 97302
Telephone: (503) 373-1196

Rule Caption: Statements to the Board and failure to disclose an arrest or conviction.

Date: 7-24-17 **Time:** 10 a.m. **Location:** 3218 Pringle Road SE Salem, OR 97302

Hearing Officer: LaReé Felton
Stat. Auth.: ORS 675.705-675.835
Stats. Implemented: ORS 675.745, 675.785, & 675.825
Proposed Adoptions: 833-110-0031
Last Date for Comment: 7-24-17, 5 p.m.

Summary: The proposed rulemaking adds "Statements to the Board" to Division 110, Compliance. It requires that licensees, interns and applicants must not make omissions or false, misleading or deceptive statements on any correspondence or form submitted to the Board. It requires that licensure applicants and renewing licensees and interns must respond completely and truthfully to all of the Board's character and fitness questions. It establishes that failure to disclose an arrest or conviction is a violation of ORS 675.825(1)(f) which may result in disciplinary action by the Board, and that the Board will not approve an application until the applicant has paid any civil penalty ordered by the Board.

NOTICES OF PROPOSED RULEMAKING

Rules Coordinator: LaReé Felton
Address: Board of Licensed Professional Counselors and Therapists,
3218 Pringle Rd. SE, Suite 120, Salem, OR 97302
Telephone: (503) 373-1196

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Board of Optometry
Chapter 852

Rule Caption: Updates to license fees, public records and records responsibilities at a sale of a practice.

Stat. Auth.: ORS 683, 182, 431, 192

Stats. Implemented: ORS 683.270, 192.001-192.505, 683.210 & 182.466, 683.140 & 683.270, 182.466, 683.270, 182.466 & 431.972

Proposed Amendments: 852-005-0035, 852-010-0051, 852-010-0080, 852-070-0035

Last Date for Comment: 8-31-17, 1 p.m.

Summary: Update Board rules for license fees to reflect a new \$2 OHA survey fee, updated public records policies and fees as well as update the Board's rules about records responsibilities with the sale of a practice.

Rules Coordinator: Shelley Sneed

Address: Board of Optometry, 1500 Liberty St. SE, Suite 210, Salem, OR 97302

Telephone: (503) 399-0662, ext. 3

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Board of Parole and Post-Prison Supervision
Chapter 255

Rule Caption: Amend procedures for assessments and classification of registered sex offenders.

Date:	Time:	Location:
7-18-17	10:30 a.m.	OCE, 3691 State St. Salem OR 97301

Hearing Officer: Michael Wu

Stat. Auth.: ORS 163A.100; 163A.125; Section 7, chapter 708, Oregon Laws 2013.

Stats. Implemented: ORS 163A.100; 163A.105; 163A.110; 163A.115; 163A.125; Section 7, chapter 708, Oregon Laws 2013.

Proposed Adoptions: 255-085-0060

Proposed Amendments: 255-085-0010, 255-085-0020, 255-085-0030, 255-085-0040, 255-085-0050

Last Date for Comment: 7-21-17, 5 p.m.

Summary: Amend rules and procedures for assessing and classifying registered sex offenders under ORS 163A.100-125.

Rules Coordinator: Perry Waddell

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

Telephone: (503) 945-0946

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Board of Pharmacy
Chapter 855

Rule Caption: Div. 043 - Dispensing Practitioner Drug Outlet Rules and Div. 110 - Fees

Date:	Time:	Location:
7-27-17	9:30 a.m.	800 NE Oregon St., Portland OR 97232 Conference Rm. 1E

Hearing Officer: Mo Klein

Stat. Auth.: ORS 689.205 & 291.055

Stats. Implemented: ORS 689.155, 689.305

Proposed Adoptions: 855-043-0505, 855-043-0510, 855-043-0520, 855-043-0525, 855-043-0530; 855-043-0535; 855-043-0540; 855-043-0545; 855-043-0550; 855-043-0555; 855-043-0560

Proposed Amendments: 855-110-0007

Last Date for Comment: 7-27-17, 4:30 p.m.

Summary: The Board proposes these revised Division 043 rules for a third time after incorporating multiple edits made to address comments and input received during the stakeholder's workgroup meet-

ings from 2012 to 2016 and the rulemaking public comment periods in November 2016 and March 2017.

These rules are specific to practitioner outlets dispensing certain FDA approved human prescription drug therapies greater than a 72 hours' supply or any medication refill. The rules exclude the registration for outlets engaged in only dispensing samples, MAP drugs, small amounts of drugs incidental to procedure/office visit, homeopathic, and natural thyroid products. Additionally, the Board does not intend to register those sites whose practitioner licensing board annually inspects the dispensing facilities to the standards of the Board.

Prescription drug dispensing has changed significantly in the last 5 years with increased access outside the pharmacy model. The process is also more sophisticated around the access to drugs, compounded drugs, supply and the chain of custody; i.e. how drugs are acquired, stored, labeled, when they expire etc. The Board of Pharmacy is charged with the regulation of the practice of pharmacy, as well as the risks and public safety related to the distribution and dispensing of prescription drugs. Dispensing Practitioner Drug Outlets are not currently regulated or inspected as all other dispensing locations. The Board wants to facilitate and ensure safe dispensing practices occur for the public.

These rules are intended to describe the Board's registration and compliance expectations for a practitioner who has been granted dispensing privileges from their licensing board and engages in drug dispensing from their practice location. A practitioner's outlet that engages in dispensing certain FDA-approved human prescription drug therapies greater than a 72 hours' supply or any medication refill will be required to register their dispensing site as a drug outlet with the Board as a Dispensing Practitioner Drug Outlet (DPDO).

The rule identifies: (1) purpose (2) registration criteria and requirements (3) policies and procedures, (4) security (5) drug acquisitions (6) drug storage (7) labeling (8) dispensing and drug delivery (9) disposal of drugs (10) recordkeeping and (11) inspections.

The Board plans a 'soft-launch' implementation and enforcement of these rules and, as always, plans to approach regulation per its 'Compliance through Education' axiom. This means that the Board intends to educate practitioners over the next 18-24 months with the goal to have qualified outlets registered and in compliance with these rules. The Board expects qualifying facilities to self-identify. The rules will be effective September 2017 to allow the Board to accept applications, but will not charge a fee until the winter 2019 renewal.

The Board also proposes the associated fee in Division 110.

A full text file of this notice and the proposed rules are on the Oregon Board of Pharmacy website at: http://www.oregon.gov/pharmacy/Pages/Laws_Rules.aspx

Questions and public comments regarding this proposed rule can be sent to: Pharmacy.Rulemaking@state.or.us.

Rules Coordinator: Mo Klein

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

Telephone: (971) 673-0001

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Department of Agriculture
Chapter 603

Rule Caption: Permanent rules for sampling and testing industrial hemp products and commodities intended for human consumption.

Date:	Time:	Location:
7-25-17	10 a.m.	Oregon Dept. of Agriculture Hearings Rm. 635 Capitol St. NE Salem, OR

Hearing Officer: Steve Harrington

Stat. Auth.: ORS 561.190; ORS 571.300-571.315; Oregon Laws 2016, Chapter 71

Stats. Implemented: ORS 571.300-571.315; Oregon Laws 2016, Chapter 71

NOTICES OF PROPOSED RULEMAKING

Proposed Adoptions: 603-048-2300, 603-048-2305, 603-048-2310, 603-048-2315, 603-048-2320, 603-048-2330, 603-048-2340, 603-048-2350, 603-048-2380, 603-048-2450, 603-048-2480

Proposed Amendments: 603-048-0010, 603-048-0500, 603-048-0650, 603-048-0800, 603-048-1000

Proposed Repeals: 603-048-2300(T), 603-048-2305(T), 603-048-2310(T), 603-048-2315(T), 603-048-2320(T), 603-048-2330(T), 603-048-2340(T), 603-048-2350(T), 603-048-2380(T), 603-048-2450(T), 603-048-2480(T), 603-048-0010(T), 603-048-0500(T), 603-048-0650(T), 603-048-0800(T), 603-048-1000(T)

Last Date for Comment: 8-11-17, 5 p.m.

Summary: These rules make permanent the temporary rules effective March 15, 2017, set to expire on September 10, 2017, that set out requirements for testing of industrial hemp products and commodities intended for human consumption (consumables) mandated by Oregon Laws 2016, Chapter 71, Section 9.

The proposed rules explain and provide procedures for registered handlers to obtain sampling and testing prior to sale to ensure consumables comply with requirements adopted by Oregon Health Authority (OHA) under ORS 475B.555(1)(a) and (b) and (2) for testing marijuana items. This rulemaking also allows the department to recognize OHA's most recent administrative rule amendments effective May 31, 2017.

Adopting these rules will implement required testing by establishing: Standards for testing hemp consumables as their marijuana item equivalencies; Minimum requirements for laboratories authorized to conduct sampling and testing; Reporting and documentation requirements for handlers and laboratories; Requirements for ordering tests; Testing standards for usable hemp, hemp concentrates or extracts, and cannabinoid products; Procedures for determining batch sizes and for sampling industrial hemp commodities and products; Requirements for labeling, storing, and securing consumables prior to successful testing; Procedures for establishing a control study; Handler options to request research or quality control testing of consumables; Protocols for consumables that fail testing, including destruction; Violations of testing requirements; and additional testing that may be required by the department.

Rules Coordinator: Sue Gooch

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

Telephone: (503) 986-4583

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Rule Caption: Amends ODA Public Records Policy to reflect new fees for public record disclosure.

Stat. Auth.: ORS 183, 192.005 & 561

Stats. Implemented: ORS 183, 192.005 & 561

Proposed Amendments: 603-001-0125

Last Date for Comment: 7-21-17, 5 p.m.

Summary: Department of Administrative Services statewide policy establishes standards for state agency policies relating to the charging practices and policies for fulfilling requests for public records. ODA needs to amend its public information administrative rule to reflect the DAS policy and be consistent with other state agencies on public records charges and policies. In addition, ODA internal management structure has changed, division administrators are now considered Program Directors. The amended public information administrative rule updates that structure change. Also, the previous 20-day requirement for the agency to provide requested records (with requirements for need of additional time) is being changed to a 10-day requirement to be consistent with state law.

Rules Coordinator: Sue Gooch

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

Telephone: (503) 986-4583

Department of Consumer and Business Services, Health Insurance Marketplace Chapter 945

Rule Caption: Director's authority to automatically enroll in a new plan a consumer who has lost coverage

Date:	Time:	Location:
7-20-17	10 a.m.	Labor and Industries Bldg., Rm. E 350 Winter St. NE Salem, OR 97301

Hearing Officer: Anthony Behrens

Stat. Auth.: ORS 705.135, 741.002, and 741.003

Stats. Implemented: ORS 741.002

Proposed Adoptions: 945-020-0030

Proposed Amendments: 945-001-0002

Last Date for Comment: 7-31-17, Close of Business

Summary: To the extent permitted by state law, 45 CFR 155.335(j)(2) and (j)(3) allow the Federally Facilitated Marketplace (FFM) to automatically enroll a qualified individual into a new plan at renewal when the individual's previous carrier ceases to offer qualified health plan coverage through the exchange or ceases to offer a plan under the individual's previous qualified health plan product (automatic enrollment under these conditions is known as a "cross-walk"). Despite an agreement with the Oregon Health Insurance Marketplace (the Marketplace) not to cross-walk affected individuals during the 2017 plan year, the FFM cross-walked several such individuals into plans with new carriers without notifying the Marketplace, causing significant carrier, consumer, and agent confusion.

ORS 741.002(2)(f) requires the Marketplace to assist individuals to enroll in qualified health plans through the health insurance exchange. The Director, acting through the Marketplace, is in the best position to determine whether individuals who lose coverage under a qualified health plan offered through the health insurance exchange should be cross-walked to a new plan, or whether targeted marketing urging these individuals to shop for new plan would be more beneficial. Moreover, in the event that the Director determines that these individuals should be cross-walked to a new plan, the Director, acting through the Marketplace, is in the best position to determine to which plans these individuals should be cross-walked.

Enactment of OAR 945-020-0030, which gives the director the sole authority to determine whether cross-walking should occur and if so, to which plans individuals should be cross-walked, will prevent the FFM from cross-walking individuals into plans that are not the best plans for these individuals or for the market. It will also prevent the federal government from cross-walking these individuals without their knowledge and without the knowledge of the Marketplace. The amendment to 945-001-0002 adds the definition of "automatically enroll" to chapter 945 for the newly adopted rule.

Rules Coordinator: Victor Garcia

Address: Department of Consumer and Business Services, Health Insurance Marketplace, 350 Winter St. NE, Salem, OR 97301

Telephone: (971) 283-1878

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Department of Consumer and Business Services, Insurance Regulation Chapter 836

Rule Caption: Revises the Certificate of Compliance filing form reflecting Division of Financial Regulation

Date:	Time:	Location:
7-27-17	1:30 p.m.	Labor & Industries Bldg. 350 Winter St. NE, Conf. Rm. E Salem OR 97301

Hearing Officer: Cece Newell

Stat. Auth.: ORS 731.244 & 731.296

Stats. Implemented: ORS 731.296, 737.205, 737.207, 742.001, 732.820, 743.015 & 743.018

Proposed Amendments: 836-010-0011

Last Date for Comment: 8-4-17, 5 p.m.

NOTICES OF PROPOSED RULEMAKING

Summary: The proposed rule updates the Certificate of Compliance sample form required as a part of each rate and form filing. The form sample is currently an exhibit within OAR 836-010-0011, this rulemaking will remove the exhibit from the rule and place it on the Division of Financial Regulation website. In addition, the proposed rule updates the form to correct the reference to the Oregon Insurance Division to the Division of Financial Regulation in order to reflect the official name change that occurred in January of 2016. Currently, a rulemaking is necessary to replace references to the Oregon Insurance Division with the Division of Financial Regulation because this form is an exhibit within the rule. This rulemaking will allow for future updates to the form to be carried out without having a formal rulemaking process.

Rules Coordinator: Karen Winkel

Address: Department of Consumer and Business Services, Insurance Regulation, 350 Winter St. NE, Salem, OR 97301

Telephone: (503) 947-7694

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

Rule Caption: Amendments to reflect the Oregon Supreme Court's decision in Brown v. SAIF Corporation

Date:	Time:	Location:
7-25-17	9 a.m.	Rm. F, Labor & Industries Bldg. 350 Winter St. NE Salem, OR

Hearing Officer: Fred Bruyns

Stat. Auth.: ORS 656.268, 656.726(4)

Stats. Implemented: ORS 656.214, 656.252, 656.268

Proposed Amendments: 436-010-0280, 436-010-0290, 436-030-0020, 436-030-0035, 436-035-0006, 436-035-0013

Last Date for Comment: 7-31-17, Close of Business

Summary: The public may also listen to the hearing or testify by telephone:

Dial-in number is 1-213-787-0529; Access code is 9221262#.

The agency proposes to amend OAR chapter 436 to:

- Reflect changes in interpretation of workers' compensation statutes by the Oregon Supreme Court in Brown v. SAIF Corporation, 361 Or 241 (2017), primarily the court's determination that "otherwise compensable injury" in ORS 656.005(7)(a)(B), refers to a medical condition and not to an injury incident;

- Eliminate references to a "condition directly resulting from the work injury";

- Update the examples in OAR 436-035-0013;

- Replace a reference to "compensable condition" with "accepted condition(s)"; and

- Replace some references to "injury claims" to indicate "initial injury claims", as well as some references to "injury claim" to indicate "initial injury claim".

Rules Coordinator: Fred Bruyns

Address: Department of Consumer and Business Services, Workers' Compensation Division, PO Box 14480, Salem, OR 97309-0405

Telephone: (503) 947-7717

Department of Energy, Energy Facility Siting Council Chapter 345

Rule Caption: Reorganization of Division 27 and rewrite of rules governing requests for amendments to site certificates.

Date:	Time:	Location:
7-28-17	8:30 a.m.	Columbia Rm. Best Western Hood River Inn 1108 E. Marina Way Hood River, OR 97031

Hearing Officer: Jason Sierman

Stat. Auth.: ORS 469.405, 469.470 & 469.501

Stats. Implemented: ORS 469.350, 469.501 & 469.503

Proposed Adoptions: 345-027-0051, 345-027-0053, 345-027-0055, 345-027-0057, 345-027-0059, 345-027-0063, 345-027-0065, 345-027-0067, 345-027-0068, 345-027-0071, 345-027-0072, 345-027-0075

Proposed Amendments: 345-015-0014, 345-015-0016, 345-015-0080, 345-015-0083, 345-027-0011, 345-027-0050, 345-027-0060, 345-027-0090, 345-027-0100

Proposed Repeals: 345-027-0070, 345-027-0080

Proposed Renumberings: 345-027-0020 to 345-025-0006, 345-027-0023 to 345-025-0010, 345-027-0028 to 345-025-0016

Proposed Ren. & Amends: 345-027-0000 to 345-027-0013, 345-027-0030 to 345-027-0085

Last Date for Comment: 7-28-17, Close of Hearing

Summary: The ultimate goals of the proposed rules are to enhance the opportunity for public participation while minimizing increases in review time. This rulemaking is not intended to alter the substantive aspects of how the Council's rules and standards apply to the Council's review of a request for an amendment to a site certificate. The scope of this rulemaking is intended to be strictly procedural in nature and effect.

The proposed rules would provide a standard, generally applicable, one-size-fits-most process that the Council would use to review most types of changes proposed by energy facility site certificate holders in a request for amendment (RFA). The idea of having most types of proposed changes reviewed through a standard process is not new and is consistent with existing rules. Existing rules provide three Council review processes: a standard, one-size-fits-most process; a transfer process; and an expedited process.

The originally proposed rules provided for only two processes: a standard, one-size-fits-most process and a transfer process. However, based on direction staff received from the Council after the first rulemaking hearing it held on February 24, 2017, staff revised the proposed rules to include a new expedited review process that is functionally similar to the existing standard review process in terms of the estimated time it takes the Council to complete its review. The proposed new expedited process is also similar to the proposed new standard process in that the steps comprising the new expedited process are the same as the steps in the proposed new standard process, minus the public hearing step, minus the step for the Council to comment on the DPO, and minus the opportunity for persons to request a contested case. Finally, the new expedited process is also similar to the existing expedited process because in order for an RFA to be reviewed through the new expedited process, the Council must first approve the certificate holder's request for expedited review in a preliminary step. Staff has written provisions for this preliminary step into the Amendment Determination Request process found in proposed rule OAR 345-027-0057.

Therefore, the procedural steps of the proposed rules would provide both a new standard review process that would function quite differently than the steps of the existing standard amendment process, and a new expedited review process that would function quite similarly to the existing standard review process, with the new expedited review process comprised of many of the same steps as the new standard review process. This new standard review process borrows some steps from the existing review process for site certificate applications, including adding steps for completeness determination, a draft proposed order, and a public hearing on the draft proposed order. Ultimately, the proposed rules amount to a wholesale re-write of the existing rules governing the Council's processes for reviewing RFAs.

The Council's existing rules for reviewing requests for amendment do not include a list of the specific types of changes that must be reviewed through the existing standard process and do not include a list of the specific types of changes that must be reviewed through the existing extended review process. Rather, under existing rules, the standard, shorter review process is the default, and the extended, longer review process must be justified by staff or requested by a certificate holder.

NOTICES OF PROPOSED RULEMAKING

In recent years, staff has reviewed nearly all RFAs under the extended review process. Extended review has been required due to the complexity of the changes proposed in RFAs and the incompleteness of RFAs. Therefore, the proposed rules would flip the concept employed under the existing rules. Rather than having the shorter process set as the default review process (as it is under existing rules), the proposed rules would set the default review process as being the process with the most steps. Under the proposed rules, this default process would still be called the standard process, but where the new standard process is the review process with the most steps. Under the proposed rules, the shorter review process with less steps (the expedited review process) would apply to an RFA only after the Council approves a certificate holder's request for expedited review under proposed rule 345-027-0057.

The new standard process would be applicable to the same types of changes that the existing standard amendment process applies to under existing rules. In other words, all types of proposed changes that require an RFA under existing rules would also require an RFA under the proposed rules, and transfers of site certificate holders or transfers in ownership of site certificate holders would continue to be reviewed through the transfer review rules of 345-027-0100.

In addition to the new steps being proposed, the proposed rules also require an amendment to the site certificate for changes proposing to add any quantity of area to the site boundary. This differs from the existing amendment process, where existing rules only require an amendment for a proposed change that adds area to the site boundary if adding area, or if some other change proposed in the same request for amendment to add area, triggers any of the thresholds under existing rule 345-027-0050(1). Staff's rationale for requiring an amendment to the site certificate for changes proposing to add area to the site boundary is that adding new area carries a relatively high likelihood of impacts to the resources the Council's rules and standards are designed to protect. Also, compared to other types of proposed changes, adding area to the site boundary increases the likelihood that new neighboring property owners could be affected by the proposed change.

Based on direction staff received from the Council after the first rulemaking hearing it held on February 24, 2017, staff revised the proposed rules to include a new option under the Amendment Determination Request (ADR) process to give the Council discretion in deciding, on a case by case basis, whether a certificate holder's proposal to add area to its site boundary would require a request for amendment. The ADR process in the proposed rules is the functional equivalent of the change request process in existing rules. Similar to the existing change request process, the proposed ADR process allows the certificate holder to request authorization to add area to the site boundary that does not trigger the need for an amendment under proposed rule 345-027-0050(5). However, rather than the optional Council review under the existing change request process, Council review is mandatory under the proposed ADR process. Under the proposed ADR process, staff is required to refer its determination of whether the proposed addition of area requires an amendment to the Council for concurrence or rejection.

The 9 major steps of the new standard amendment process being proposed in this rulemaking are summarized briefly in the following 9 paragraphs:

Pre-Amendment Conference (PAC)

Proposed rules codify how a voluntary PAC is available to certificate holders for most types of proposed changes. Council staff has always been available for consultation to assist a certificate holder before submission of a request for amendment, but people may not have been aware of this option due to it not being written in rule. One exception to the voluntary nature of the PAC is that the proposed rules would require the certificate holder to participate in a mandatory PAC with staff before submitting an RFA for a change proposing to add area to the site boundary. For all other types of proposed changes, the PAC is voluntary.

Preliminary Amendment Request (pRFA)

Proposed rules require all RFAs be deemed a preliminary request for amendment (pRFA) until staff determines that the certificate holder has submitted all the information necessary for staff to complete its review of the RFA.

Determination of Completeness (DOC)

Proposed rules add an explicit stage in the amendment review process for staff to determine whether the pRFA contains adequate information for the Council to make findings or impose conditions on all applicable Council standards. This step is consistent with how staff currently processes RFAs, but officially codifying staff's practice in rule would ensure staff has a sufficient period of time to determine whether it needs additional information from the certificate holder in order to prepare a draft proposed order (DPO) (see next paragraph for more discussion on the DPO).

Draft Proposed Order (DPO)

The proposed rules require staff to issue a DPO containing staff's written analysis of how the certificate holder's RFA demonstrated compliance with all applicable laws and Council standards. The DPO would be the first written document reflecting staff's analysis and draft recommendations issued to the public. In contrast, under the existing process, the first written document reflecting staff's analysis and recommendations issued to the public is a proposed order (PO). Adding this step would allow the Council more flexibility to make changes in response to comments received during the public comment period.

Public Comment and Hearing on the DPO

In the existing amendment process, upon receipt of an RFA, staff solicits comments on the RFA from the public and reviewing agencies. These comments are received before staff issues a document containing staff's analysis of how the RFA complies with all applicable siting standards. After receiving comments on the RFA, staff reviews all the timely comments it receives on the record of the DPO, then completes its analysis of the RFA, and then issues a PO. Once a PO is issued, staff solicits comments and requests for contested case on the PO.

The proposed rules consolidate comments into a single round after the issuance of the DPO. This allows for comments to be based on the complete RFA and staff's initial analysis and conclusions of facts and law as to whether the certificate holder has demonstrated it will meet all applicable laws and Council standards.

The proposed rules also provide for a mandatory public hearing on the DPO. The hearing would increase the public's opportunity to meaningfully participate in the review of an RFA by instituting an automatic time and place for people to provide oral comments. The DPO hearing for an RFA must be conducted by the Council itself rather than by an appointed hearing's officer to ensure they hear all testimony directly.

A feature of the proposed DPO hearing and comment period is for it to function as a "raise it or waive it" opportunity for people to engage in the amendment review process. As such, any person who does not properly raise an issue in a comment on the record of the DPO would not be eligible to raise new issues later in the process and would not be able to participate in a contested case on any issues. In the existing amendment review process, after the PO is issued, any person can provide comment on any issue and any person can request a contested case on any issue.

Proposed Order (PO)

Before issuing a Proposed Order (PO), staff would consider all oral and written comments received on the record of the DPO. Because the recommendations in the DPO may change in response to comments received on the DPO, the PO may or may not include the same recommendations to the Council that were made in the DPO.

As discussed above, the proposed rules do not include a comment period on the PO. However, with the addition of the DPO and the mandatory public hearing on the DPO, the public and the certificate holder would have more opportunity for meaningful participation than what the existing amendment review process provides.

NOTICES OF PROPOSED RULEMAKING

Requests for Contested Case (CC)

Proposed rules require requests for CC on the PO be limited to those persons who previously commented on the record of the DPO hearing and limited to only those issues a prior commenter previously raised on the record of the DPO hearing. The public comment period and the public hearing on the DPO, therefore, would function as a "raise it or waive it" opportunity for the public and the certificate holder to raise issues and preserve their ability to participate further in the review process.

Council Considers CC Requests

Proposed rules do not make any changes to how the Council considers and evaluates CC requests to determine whether to grant a CC for a RFA. The existing amendment process does not include an automatic contested case. Instead, any person may request a CC proceeding on the PO for an RFA. Requests for CC are then considered by the Council to determine if any requests meet the threshold criteria necessary for the Council to grant a CC. To grant a request for a CC, the Council must find that the request raises a significant issue of fact or law that may affect the Council's determination that the facility, with the change proposed by the amendment, meets the applicable laws or Council standards. Proposed rules clarify the language describing this Council's CC determination process, but proposed rules make no substantive changes to how this process functions in existing rules.

Under proposed rules, if the Council finds that the contested case request was properly raised on the record of the DPO hearing, and the contested case request meets the threshold determination described above, a contested case would be conducted as described in the existing Council rules. Proposed rules do not make any substantive changes to how the contested case would be conducted. If the Council finds that the contested case request was not properly raised on the record of the DPO hearing, or if the contested case request does not meet the threshold determination described above, the Council would review the proposed order and make a final decision on the amendment request. Proposed rule do not make any substantive changes to how the Council makes its final decision when there is not a contested case.

Council's Final Decision and Scope of Review

Proposed rules clarify the existing rules stating how the Council makes its final decision and what the Council's scope of review is for the various types of amendments (i.e. under existing rules, the Council's scope of review for RFA's proposing to add new area to a site boundary differs from the scope of review for an RFA proposing to extend construction deadlines). These changes are necessary to clarify existing rule language, and to ensure consistency and compatibility with the other rule changes being proposed.

The Council requests public comment on these proposed rules. The Council also requests public comment on whether other options should be considered for achieving the substantive goals of the proposed rules while reducing the negative economic impact of the proposed rules on business. A call-in number is available for the public hearing. Please see the Oregon Department of Energy website for hearing details, proposed rule language, and other materials: <https://www.oregon.gov/energy/Get-Involved/Pages/Energy-Facility-Siting-Council-Rulemaking.aspx>

Rules Coordinator: Jason Sierman

Address: Department of Energy, Energy Facility Siting Council, 550 Capitol St. NE, 1st Floor, Salem, OR 97302

Telephone: (503) 373-2127

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Department of Fish and Wildlife Chapter 635

Rule Caption: Rule Amendments Related to the 2018 Oregon Sport Fishing Regulations

Date:	Time:	Location:
8-4-17	8 a.m.	ODFW Headquarters 4034 Fairview Industrial Dr. SE Salem OR 97302

Hearing Officer: Oregon Fish & Wildlife

Stat. Auth.: ORS 496.138, 496.146, 496.162, 497.121, 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.138, 496.146, 496.162, 506.109, 506.129.

Proposed Adoptions: Rules in 635-011, 012, 013, 014, 016, 017, 018, 019, 021, 023, 039 & 500

Proposed Amendments: Rules in 635-011, 012, 013, 014, 016, 017, 018, 019, 021, 023, 039 & 500

Proposed Repeals: Rules in 635-011, 012, 013, 014, 016, 017, 018, 019, 021, 023, 039 & 500

Last Date for Comment: 8-4-17, Close of Hearing

Summary: These rules modify sport fishing regulations for finfish, shellfish, and marine invertebrates for 2018. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

Rules Coordinator: Michelle Tate

Address: Department of Fish and Wildlife, 4034 Fairview Industrial Dr. SE, Salem, OR 97302

Telephone: (503) 947-6044

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Department of Human Services, Self-Sufficiency Programs Chapter 461

Rule Caption: Treatment of shelter-in-kind income in APD medical programs

Date:	Time:	Location:
7-24-17	11 a.m.	500 Summer St. NE, Rm. 254 Salem, OR

Hearing Officer: Robert Trachtenberg

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049

Proposed Amendments: 461-145-0470, 461-155-0020, 461-155-0250, 461-155-0660, 461-155-0670

Proposed Repeals: 461-155-0300, 461-145-0470(T), 461-155-0020(T), 461-155-0250(T), 461-155-0300(T), 461-155-0660(T), 461-155-0670(T)

Last Date for Comment: 7-25-17, 5 p.m.

Summary: OAR 461-145-0470 about shelter-in-kind income is being amended to exclude unearned shelter-in-kind in the OSIP, OSIPM, and QMB programs. OAR 461-155-0020 about pro-rated standards-adjusted number in household is being amended to remove OSIP, OSIPM, and QMB programs, clarify that the rule now only applies in the TANF program, and clarify proration for foster children in the household. OAR 461-155-0250 about OSIPM income and payment standards is being amended to remove the OSIPM items of need chart, and the adjusted number in household labels and the pro-rated standards from the adjusted income standards chart (section (3)). OAR 461-155-0300 about shelter-in-kind standards is being repealed. OAR 461-155-0660 about special need, accommodation allowance and OAR 461-155-0670 about special need, special diet allowance are being amended to remove references to the shelter and food standards in 461-155-0250 (which are removed) and refer to the actual dollar amounts instead.

These rule changes make permanent temporary rule changes that were effective April 1, 2017 and implement the federally-approved state plan amendment that has an effective date of April 1, 2017 and will support client eligibility. In addition, non-substantive edits may be made to these rules to: ensure consistent terminology throughout self-sufficiency program rules and policies; make general updates consistent with current Department practices; update statutory and rule references; correct formatting and punctuation; improve ease of reading; and clarify Department rules and processes.

Rule text showing edits for the rules described above is available at http://www.dhs.state.or.us/policy/selfsufficiency/ar_proposed.htm.

Rules Coordinator: Robert Trachtenberg

NOTICES OF PROPOSED RULEMAKING

Address: Department of Human Services, Self-Sufficiency Programs, 500 Summer St. NE, E48, Salem, OR 97301
Telephone: (503) 947-5290

Rule Caption: Amending rules relating to requirements for self-sufficiency clients and providers

Date:	Time:	Location:
7-24-17	11 a.m.	500 Summer St. NE Rm. 254, Salem, OR 97301

Hearing Officer: Robert Trachtenberg

Stat. Auth.: ORS 329A.500, 409.050, 411.060, 411.070, 411.122, 411.083, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685

Other Auth.: 7 USC 2015(o), 42 USC 1396p(d)(4)(A), 7 CFR 273.12, 7 CFR 273.24

Stats. Implemented: ORS 329A.500, 409.010, 411.060, 411.070, 411.083, 411.122, 411.404, 411.706, 411.816, 411.825, 411.837, 412.014, 412.049, 413.085, 414.685, 414.826, 414.839

Proposed Amendments: 461-145-0540, 461-165-0160, 461-170-0011, 461-170-0101

Proposed Repeals: 461-145-0540(T), 461-165-0160(T), 461-170-0011(T), 461-170-0101(T)

Last Date for Comment: 7-25-17, 5 p.m.

Summary: OAR 461-145-0540 relating to the treatment of trusts is being amended to make permanent the temporary rule amendment adopted on March 13, 2017 that reinstated the treatment of revocable trusts in the ERDC, REF, REFM, and TANF programs in effect prior to 2016 to align the ERDC and TANF programs with the SNAP program, and aligned the REF and REFM programs with the TANF program. The amendment counts trust payments as unearned income in these four programs.

OAR 461-165-0160 about direct payments to child care providers is being amended to make permanent the temporary rule amendment adopted on March 24, 2017 that allows licensed providers to receive reimbursement for care provided prior to their approval date so long as the client was eligible for child care services. Licensed providers have complete background checks through their licensing process.

OAR 461-170-0011 regarding the changes a client in the SNAP program must report is being amended to include any time limit county as an area in Oregon whose residents must report if their work hours drop below 20 hours a week. This rule is also being amended to add change in pregnancy status as condition that must be reported for the Refugee Medical (REFM) program. OAR 461-170-0101 regarding when a SNAP household may use the simplified reporting system is being amended to any time limit county as an area in Oregon whose residents may have a less than 6-month certification period and use simplified reporting. Oregon is required by federal law to implement SNAP time limits in certain counties as the economy improves. The rule changes in the SNAP program make permanent temporary amendments adopted March 10, 2017 that initially affected clients in Clackamas County.

In addition, non-substantive edits may be made to these rules to: ensure consistent terminology throughout self-sufficiency program rules and policies; make general updates consistent with current Department practices; update statutory and rule references; correct formatting and punctuation; improve ease of reading; and clarify Department rules and processes.

Rule text showing edits for the rules described above is available at http://www.dhs.state.or.us/policy/selfsufficiency/ar_proposed.htm.

Rules Coordinator: Robert Trachtenberg

Address: Department of Human Services, Self-Sufficiency Programs, 500 Summer St. NE, E48, Salem, OR 97301

Telephone: (503) 947-5290

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

Rule Caption: Documents Equivalent to Manufacturer's Certificate of Origin

Date:	Time:	Location:
7-20-17	2 p.m.	DMV Headquarters 1905 Lana Ave Salem OR

Hearing Officer: Liz Woods

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.045, 803.050

Other Auth.: None

Stats. Implemented: ORS 801.402

Proposed Amendments: 735-022-0060

Last Date for Comment: 7-21-17, 5 p.m.

Summary: DMV proposes to amend OAR 735-022-0060 in response to Senate Bill 782 introduced during the 2017 Legislative Session. SB 782 proposed to change statutory language giving DMV additional rule authority. However, as DMV understood the perceived need for the bill it was determined that DMV already had authority to make the specific rule changes needed to implement the intent of SB 782. The proposed amendment to OAR 735-022-0060 will establish a specific situation where a vehicle rental business may submit a new type of ownership document in lieu of a Manufacturer's Certificate of Origin (MCO) when titling and registering a brand new vehicle for the first time through the Electronic Vehicle Registration (EVR) Program. Specific requirements that vehicle rental businesses must meet are established by rule. There is also specific content that will be required to be submitted to the EVR integrator for submission of the new type of ownership document to DMV. This amendment will allow a vehicle rental business to efficiently title and register rental vehicles to be operated on the roads.

Rules Coordinator: Lauri Kunze

Address: Department of Transportation, Driver and Motor Vehicle Services Division, 355 Capitol St. NE, MS 51, Salem, OR 97301

Telephone: (503) 986-3171

Department of Transportation, Highway Division Chapter 734

Rule Caption: Locations of Interstate Speed Limits; Speed Zone Definitions; Establishment of Speed Zones on Public Roads

Stat. Auth.: ORS 184.616, 184.619, 810.010, 810.180

Stats. Implemented: ORS 810.180

Proposed Amendments: 734-020-0011, 734-020-0014, 734-020-0015

Last Date for Comment: 7-21-17, 5 p.m.

Summary: ORS 810.180 authorizes the Department of Transportation to conduct speed zone investigations and set speeds on most public roads, including interstate highways. As amended 734-020-0011 reflects changes to wording to cover all Interstate speed limits due to HB 3402 (2015/2016), which amended ORS 811.111 increasing speeds on a portion of Interstate 84 and also increases speeds for vehicles listed in ORS 811.111(1)(b) on specific sections of interstates as listed. A section of Interstate 5 in the Roseburg area is excluded from this speed increase and instead lowers the speed for all vehicles, keeping the existing speed for vehicles listed in ORS 811.111(1)(b). Minor edits have been made to 734-020-0014 and 734-020-0015 to clarify three speed zoning definitions and will update the State Traffic-Roadway Engineer's title listed throughout the OAR.

Rules Coordinator: Lauri Kunze

Address: Department of Transportation, Highway Division, 355 Capitol St. NE, MS 51, Salem, OR 97301

Telephone: (503) 986-3171

NOTICES OF PROPOSED RULEMAKING

Oregon Board of Accountancy Chapter 801

Rule Caption: Update rules on complaint process and disciplinary authority.

Date: 7-19-17 **Time:** 10 a.m. **Location:** 3218 Pringle Rd SE
1st Floor Conference Rm.
Salem, OR

Hearing Officer: John Lauseng

Stat. Auth.: ORS 673.010–673.465

Stats. Implemented: ORS 673.170 & 673.410

Proposed Amendments: 801-001-0040, 801-030-0020

Last Date for Comment: 8-1-17, Close of Business

Summary: Clarifies investigatory process and disciplinary authority of the Board.

Rules Coordinator: Kimberly Fast

Address: Oregon Board of Accountancy, 3218 Pringle Rd. SE, Suite 110, Salem, OR 97302

Telephone: (503) 378-2268

Oregon Business Development Department Chapter 123

Rule Caption: These rule amendments relate to the Seismic Rehabilitation Grants Program.

Stat. Auth.: ORS 285A.093, 285A.098, 401.910 & 2013 OL Ch. 782

Stats. Implemented: ORS 285A.093, 285A.098, 401.910 & 2013 OL Ch. 782

Proposed Amendments: Rules in 123-051

Last Date for Comment: 7-24-17, Close of Business

Summary: The amendments to division 051 contain the removal of the reference to the State Board of Higher Education as they were abolished in the 2015 legislative session (SB 80).

The Seismic Advisory Committee voted to increase the maximum grant amount from \$1.5 million to \$2.5 per project. The committee also voted to require shelter projects be retrofit to immediate occupancy standards.

Rules Coordinator: Mindie Sublette

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

Telephone: (503) 986-0036

Oregon Department of Education Chapter 581

Rule Caption: TeachOregon Grant

Date: 7-21-17 **Time:** 9:30 a.m. **Location:** 255 Capitol St. NE
Salem, Rm 400A

Hearing Officer: Emily Nazarov

Stat. Auth.: ORS 342.950

Stats. Implemented: ORS 342.950

Proposed Adoptions: 581-018-0593, 581-018-0596, 581-018-0599, 581-018-0602, 581-018-0605, 581-018-0608

Last Date for Comment: 8-24-17, 9 a.m.

Summary: Sets parameters for the grant program focused on addressing the teacher shortage in Oregon with a focus on targeting bilingual/bicultural candidates.

Rules Coordinator: Cindy Hunt

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

Telephone: (503) 947-5651

Oregon Department of Education, Early Learning Division Chapter 414

Rule Caption: Administrative rules governing development, implementation and involvement in Oregon's Quality Rating and Improvement System.

Stat. Auth.: ORS 326.425(7)

Stats. Implemented: ORS 329A.261

Proposed Adoptions: 414-510-0005, 414-510-0010, 414-510-0015, 414-510-0020, 414-510-0030, 414-510-0040, 414-510-0050, 414-510-0060, 414-510-0070

Last Date for Comment: 7-24-17, 5 p.m.

Summary: Proposed administrative rules address governance of the tiered quality rating and improvement system established in ORS 329A.261. Rules will establish the entity or entities responsible for establishing the tiered standards and assigning ratings; eligibility requirements for involvement in the quality rating and improvement system; processes for appealing rating, and; monitoring and reporting requirements. Administrative rules will also address process for programs that are exempt from child care licensing rules to engage in the quality rating and improvement system.

Rules Coordinator: Lisa Pinheiro

Address: Oregon Department of Education, Early Learning Division, 775 Summer St. NE, Suite 300, Salem, OR 97301

Telephone: (503) 910-8135

Rule Caption: Repeals match requirement for Healthy Families Oregon; updates language to conform with current program administration

Stat. Auth.: ORS 326.425(7)

Stats. Implemented: ORS 417.705 through ORS 417.797

Proposed Adoptions: 414-525-0020, 414-525-0025, 414-525-0035

Proposed Amendments: 414-525-0010, 414-525-0015

Last Date for Comment: 7-24-17, 5 p.m.

Summary: Proposed rule repeals the match requirement for Healthy Families Oregon programs and updates rule language to conform with current program administration.

Rules Coordinator: Lisa Pinheiro

Address: Oregon Department of Education, Early Learning Division, 775 Summer St. NE, Suite 300, Salem, OR 97301

Telephone: (503) 910-8135

Rule Caption: Permanent rule revisions to 414-061-0080 rules to meet federal background check requirements.

Stat. Auth.: ORS 329A.030

Other Auth.: ORS 326.425(7)

Stats. Implemented: ORS 329A.030

Proposed Amendments: 414-061-0080

Last Date for Comment: 7-24-17, 5 p.m.

Summary: Revisions to rules will allow the Office of Child Care (OCC) to conduct FBI fingerprint checks in all circumstances as required by federal law as a condition for receiving federal Child Care and Development Block Grant (CCDBG) funds. OCC can no longer access criminal information from other states without having fingerprint identification for all applicants. Rule revisions also bring the OCC suitability factors for background checks in line with the Oregon State Police (OSP) suitability factors.

Rules Coordinator: Lisa Pinheiro

Address: Oregon Department of Education, Early Learning Division, 775 Summer St. NE, Suite 300, Salem, OR 97301

Telephone: (503) 910-8135

Oregon Health Authority, Health Licensing Office, Behavior Analysis Regulatory Board Chapter 824

Rule Caption: House Bill 2931 added an option to the qualifications for behavior analysis interventionist registration.

Stat. Auth.: 676.802, 676.815, 2017 House Bill 2931

Stats. Implemented: 676.802, 676.815, 2017 House Bill 2931

Proposed Amendments: 824-030-0040

Last Date for Comment: 7-28-17, 9 a.m.

NOTICES OF PROPOSED RULEMAKING

Summary: 2017 House Bill 2931 added “a degree from a post-secondary institution” to the qualification options for registration as a behavior analysis interventionist.

Rules Coordinator: Anne Thompson

Address: Health Licensing Office, Behavior Analysis Regulatory Board, 1430 Tandem Ave. NE, Suite 180, Salem, OR 97301

Telephone: (503) 373-1904

Oregon Health Authority, Health Systems Division: Medical Assistance Programs Chapter 410

Rule Caption: Annual Updates; Relative Value Unit (RVU) Weight; Clinical Lab, ASC

Date:	Time:	Location:
7-18-17	10:30 a.m.	500 Summer St. NE Salem, OR 97301, Rm. 137B

Hearing Officer: Sandy Cafourek

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025, 414.033, 414.065, 414.095, 414.727, 414.728, 414.742 & 414.743

Proposed Amendments: 410-120-1340

Proposed Repeals: 410-120-1340(T)

Last Date for Comment: 7-20-17, 5 p.m.

Summary: The Oregon Health Authority, Health Systems Division (Division) General Rules govern payments for services provided to certain eligible clients. The Division amends OAR 410-120-1340 to implement the annual updates by the Centers for Medicare and Medicaid (CMS) Relative Value Unit (RVU) weights for physician services, Clinical Lab and Ambulatory Surgical Centers.

Rules Coordinator: Sandy Cafourek

Address: Oregon Health Authority, Health Systems Division: Medical Assistance Programs, 500 Summer St. NE, 3rd Floor, Salem, OR 97301

Telephone: (503) 945-6430

Oregon Health Authority, Public Employees' Benefit Board Chapter 101

Rule Caption: This filing, the result of a rules review, cleans up language and OAR references.

Date:	Time:	Location:
8-14-17	4 p.m.	Human Services Bldg. - 559 500 Summer St. NE Salem, OR

Hearing Officer: Cherie Taylor

Stat. Auth.: ORS 243.061-302, 659A.060-069, 743.600-602 & 743.707

Stats. Implemented: ORS 243.061-302, 292.501 & 2007 OL Chap. 99

Proposed Amendments: 101-010-0005, 101-020-0002, 101-020-0005, 101-020-0015, 101-020-0018, 101-020-0025, 101-020-0032, 101-020-0037, 101-020-0045, 101-020-0050, 101-020-0060, 101-020-0065, 101-020-0066, 101-030-0005, 101-030-0010, 101-030-0015, 101-030-0022, 101-030-0027, 101-050-0005, 101-050-0010, 101-060-0010

Last Date for Comment: 8-14-17, Close of Business

Summary: This filing, the result of a rules review, cleans up language and OAR references.

Rules Coordinator: Cherie Taylor

Address: Oregon Health Authority, Public Employees' Benefit Board, 500 Summer Street NE, MS E-89, Salem, OR 97301

Telephone: (503) 378-6296

Oregon Health Authority, Public Health Division Chapter 333

Rule Caption: Implementing changes to the definition of “enclosed area” under the Oregon Indoor Clean Air Act

Date:	Time:	Location:
7-18-17	2 p.m.	Portland State Office Bldg., 800 NE Oregon St., Rm. 1A Portland, OR 97232
7-20-17	10 a.m.	Jackson County Health and Human Services Bldg. 140 S. Holly St. Parkview Rm #2194 Medford, OR 97501
7-21-17	10 a.m.	Mike Maier Building Community Board Rm. 1130 NW Harriman Ave. Bend, OR 97701

Hearing Officer: Jana Fussell

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835

Proposed Amendments: 333-015-0030

Last Date for Comment: 7-24-17, 5 p.m.

Summary: The Oregon Health Authority, Public Health Division, is proposing permanent amendments to chapter 333, division 15, pertaining to the Oregon Indoor Clean Air Act (ICAA). The proposed rulemaking amends the definition of “enclosed area” to better effect the purpose of the statute, and/or add clarity to the rules.

Rules Coordinator: Brittany Hall

Address: Oregon Health Authority, Public Health Division, 800 NE Oregon St., Suite 930, Portland, OR 97232

Telephone: (503) 449-9808

Oregon State Lottery Chapter 177

Rule Caption: Housekeeping changes to Division 40; remove obsolete provisions; clarify meaning and requirements; update references

Date:	Time:	Location:
7-17-17	2 p.m.	Oregon State Lottery 500 Airport Rd. SE Salem Oregon

Hearing Officer: Staff

Stat. Auth.: ORS Chapter 461

Other Auth.: Oregon Constitution, Article XV, Section 4(4)

Stats. Implemented: ORS 461.300, 461.700

Proposed Amendments: 177-040-0000, 177-040-0001, 177-040-0005, 177-040-0010, 177-040-0024, 177-040-0026, 177-040-0050, 177-040-0055, 177-040-0061, 177-040-0070, 177-040-0130, 177-040-0320

Last Date for Comment: 7-17-17, 2:30 p.m.

Summary: The Oregon Lottery has filed a Notice of Proposed Rule-making Hearing to amend the above administrative rules to remove obsolete or redundant provisions; clarify meaning and requirements; update references; and make grammatical and language changes. The rules are located in Division 40 - Retailer Contract.

Rules Coordinator: Mark W. Hohlt

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

Telephone: (503) 540-1417

Public Utility Commission, Oregon Board of Maritime Pilots Chapter 856

Rule Caption: Amends applicant selection requirements.

Date:	Time:	Location:
7-25-17	2 p.m.	800 NE Oregon St., 1-C Portland, OR

Hearing Officer: Board of Maritime Pilots

NOTICES OF PROPOSED RULEMAKING

Stat. Auth.: ORS Chapter 776

Stats. Implemented: ORS 776.115

Proposed Amendments: 856-010-0014

Last Date for Comment: 7-25-17, 3 p.m.

Summary: Counsel to the Board has determined that applicant interviews as prescribed by 856-010-0014(14)(c) constitute a public meeting. This amendment corrects the process so that applicant interviews do not constitute a public meeting.

Rules Coordinator: Susan Johnson

Address: Public Utility Commission, Oregon Board of Maritime Pilots, 800 NE Oregon St., Suite 507, Portland, OR 97232

Telephone: (971) 673-1530

Rule Caption: Amends applicant selection requirements.

Stat. Auth.: ORS Chapter 776

Stats. Implemented: ORS 776.115

Proposed Amendments: 856-010-0026

Last Date for Comment: 7-25-17, 3 p.m.

Summary: Counsel to the Board has determined that applicant interviews as prescribed by 856-010-0026(2)(c) constitute a public meeting. This amendment corrects the process so that applicant interviews do not constitute a public meeting.

Rules Coordinator: Susan Johnson

Address: Public Utility Commission, Oregon Board of Maritime Pilots, 800 NE Oregon St., Suite 507, Portland, OR 97232

Telephone: (971) 673-1530

ADMINISTRATIVE RULES

Board of Architect Examiners Chapter 806

Rule Caption: Board of Architect Examiners 2017-19 Budget
Adm. Order No.: BAE 2-2017
Filed with Sec. of State: 6-8-2017
Certified to be Effective: 6-8-17
Notice Publication Date: 2-1-2017
Rules Amended: 806-001-0003
Subject: Adopts the Board of Architect Examiners 2017-19 Budget of \$1,248,270.00
Rules Coordinator: Maria Brown—(503) 763-0662

806-001-0003 Biennial Budget

Pursuant to the provisions of ORS 182.462, the Board adopts by reference the Oregon State Board of Architect Examiners' 2017-2019 Biennial Budget of \$1,248,270 covering the period July 1, 2017, through June 30, 2019. The Board Administrator will amend budgeted accounts as necessary, within the approved budget of \$1,248,270, for the effective operation of the Board. The Board will not exceed the approved budget amount without amending this rule, notifying holders of licenses, and holding a public hearing. Copies of the budget are available from the Board's office.

[Publications referenced are available from the agency.]
Stat. Auth.: ORS 671.120, 671.125, 182.462 & 183.705
Stats. Implemented: ORS 671.125 & 182.462
Hist.: AE 1-1997(Temp), f. & cert. ef. 7-25-97; AE 3-1997, f. & cert. ef. 12-11-97; BAE-1998, f. & cert. ef. 6-22-98; BAE 2-1999, f. & cert. ef. 5-25-99; BAE 2-2001, f. 6-6-01, cert. ef. 7-1-01; BAE 2-2003, f. 4-11-03 cert. ef. 7-1-03; BAE 1-2005, f. 3-14-05, cert. ef. 7-1-05; BAE 1-2007, f. 5-8-07, cert. ef. 7-1-07; BAE 2-2009, f. & cert. ef. 5-14-09; BAE 3-2009, f. 5-22-09, cert. ef. 7-1-09; BAE 1-2011, f. 6-6-11, cert. ef. 7-1-11; BAE 4-2012, f. 10-25-12, cert. ef. 11-1-12; BAE 2-2013, f. 4-8-13, cert. ef. 7-1-13; BAE 1-2015, f. 5-14-15, cert. ef. 7-1-15; BAE 1-2017, f. & cert. ef. 5-15-17; BAE 1-2017, f. & cert. ef. 5-15-17; BAE 2-2017, f. & cert. ef. 6-8-17

**Board of Examiners for Engineering and Land Surveying
Chapter 820**

Rule Caption: Adopt the Board's 2017-2019 budgeted expenditures and amend rule related to structural registration requirements.
Adm. Order No.: BEELS 2-2017
Filed with Sec. of State: 6-12-2017
Certified to be Effective: 7-1-17
Notice Publication Date: 4-1-2017
Rules Amended: 820-010-4000, 820-080-1000
Subject: OAR 820-080-1000 - The amendment decreases the amount of the intended limit for payment of expenditures for the Board during the 2017-2019 biennium to \$3,230,000.
OAR 820-010-4000 - The amendment includes the additional dates and titles of the California structural engineer examinations to be considered as qualifying for the structural designation with the Board.
Rules Coordinator: Jenn Gilbert—(503) 934-2107

820-010-4000 Qualifications for Registration as a Structural Engineer

In order to qualify for registration as a Professional Structural Engineer in Oregon, an applicant for registration must provide all of the following:

- (1) Evidence satisfactory to the Board of active Oregon registration as a Professional Engineer, in good standing.
- (2) Evidence satisfactory to the Board of passing or having passed the NCEES 16-hour Structural Examination, or the structural examinations offered during the timeframes as follows:
 - (a) 1952-2003, the 8-hour Western Region general and 8-hour Western Region in-depth. This examination was also known as the "Western States" or the California 16-hour SE exam;
 - (b) 1986-October 2005, the 8-hour NCEES general (SE I) and the 8-hour NCEES in-depth (SE II);
 - (c) 2004-2010, the 8-hour NCEES in-depth (SE II) and:
 - (i) The 8-hour Washington Structural III; or
 - (ii) The 8-hour California Structural III. This examination was also known as the "California Structural Engineering Seismic Examination (CSESE)," the California Structural Examination 2 (CSE2)," and the "California Structural Engineering Exam."

(3) Evidence satisfactory to the Board of having obtained two years of structural engineering experience, verified by a registered Structural Engineer in a jurisdiction with NCEES membership.

(4) A single application packet, which must include all of the following:

- (a) A completed Registration Application form.
- (b) The Board will verify that the Applicant holds active registration as an Oregon professional engineer, in good standing.
- (c) Official verification of successful passage of the NCEES 16-hour Structural Examination, Buildings Modules or the structural examinations listed under subsection (2)(a) through (c). This paragraph of subsection (4) of this rule is effective as of June 25, 2015.

NOTE: The 16-hour Structural examinations are written and scored by the NCEES and administered by NCEES Exam Administration Services. Consult NCEES for examination dates, times, locations, cost, and details

(d) A completed Experience Details form describing active practice in structural engineering work, as defined in OAR 820-040-0020.

(e) Five references from individuals with knowledge of the Applicant's structural engineering work:

(A) All five references must attest to the Applicant's ability, professional experience, or both. All five references must complete the Reference Details form provided by the Board and submit the completed Reference Details form directly to the Applicant, in a closed and sealed envelope, signed across the sealed flap by the reference.

(B) At least three of the five references must hold active Structural Engineer registration in a jurisdiction with NCEES membership.

(C) The Board may, for good cause and upon written application, reduce the number of references required for an Applicant.

(f) For Applicants holding registration in another jurisdiction, in lieu of providing the items listed under (b) to (e) of this subsection, the Applicant may release the Applicant's NCEES Record, if any, to the Board

NOTE: See <http://ncees.org/records/>

(g) For Applicants holding structural registration in another jurisdiction references on file with the Board may be used.

(h) Any and all professional disciplinary records of the Applicant, including but not limited to final orders, letters of reprimand, stipulations, and settlement agreements.

(h) The required application and wall certificate fees.

Stat. Auth.: ORS 670.310, 672.107, & 672.255
Stats. Implemented: ORS 672.002 - 672.325
Hist.: BEELS 5-2015(Temp), f. & cert. ef. 8-19-15 thru 2-12-16; BEELS 8-2015, f. & cert. ef. 11-13-15; BEELS 4-2016(Temp), f. & cert. ef. 3-15-16 thru 9-10-16; Administrative correction, 9-23-16; BEELS 6-2016, f. & cert. ef. 10-4-16; BEELS 2-2017, f. 6-12-17, cert. ef. 7-1-17

820-080-1000 Budget

The amount of \$3,230,000 is established for the biennium beginning July 1, 2017, as the intended limit for payment of expenses from fees, moneys or other revenue, including miscellaneous receipts, collected or received by the Board.

Stat. Auth.: ORS 182.462, 670.310, 672.155 & 672.255
Stats. Implemented: ORS 672.002 - 672.325
Hist.: BEELS 5-2015(Temp), f. & cert. ef. 8-19-15 thru 2-12-16; BEELS 8-2015, f. & cert. ef. 11-13-15; BEELS 2-2017, f. 6-12-17, cert. ef. 7-1-17

Rule Caption: To clarify the definition of engineering as used in ORS 672.005.

Adm. Order No.: BEELS 3-2017(Temp)

Filed with Sec. of State: 6-12-2017

Certified to be Effective: 6-13-17 thru 12-8-17

Notice Publication Date:

Rules Amended: 820-040-0005

Subject: OAR 820-040-0005 - The proposed language added to this rule adds clarification to the way the Board interprets the definitions of professional service, creative work, and testimony as used in ORS 672.005. The proposed language also clarifies the using the term "engineer" and "purports to be able to perform" as used statute.

Rules Coordinator: Jenn Gilbert—(503) 934-2107

820-040-0005 Definitions

(1) As used in ORS 672.060(10) and 672.107(1)(a)(B), "Ground Area" is defined as any projected or suspended occupied areas above the ground level in combination with areas in contact with the ground. Measurements in determining the ground area shall be taken from outside wall to outside wall and include the sum of the areas of all additions and the

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area of the original structure. The ground area of a building, or portion thereof, not provided with surrounding exterior walls is the usable area under the horizontal projection of the roof or floor above.

(2) As used in ORS 672.060(11) and 672.107(1)(a)(B), "Height" is measured from the top surface of the lowest flooring to the highest interior overhead finish of the structure in determining whether a building exceeds the 20-foot height limitation. A basement floor is considered the lowest flooring when useable (i.e., storage, garage, etc.)

(3) As used in ORS 672.107(1)(a)(D), the height of a structure is defined as the vertical dimension from the average ground level to the average roof height for sloped roofs or parapet height for flat roofs. In multi-level structures, utilize the upper roof only to determine the dimension.

(4) As used in ORS 672.060(10) and (11), "Appurtenance" means a separate structure that:

(a) Is subordinate to a single family residential dwelling, farm building, or building less than 4,000 square feet in ground area or 20 feet in height;

(b) Is itself no greater than 4,000 square feet in floor area; and,

(c) Is located on the same lot as the structure to which it is subordinate.

(d) "Appurtenance" includes but is not limited to:

(A) A retaining wall less than four feet in height, with level backfill, and not supporting any structure;

(B) Signage less than 15 feet in height and 50 square feet;

(C) Fences less than 12 feet in height;

(D) A carport, cabana, playhouse, or garden structure, no more than 20 feet in height and with vertical and horizontal structural elements primarily formed by a system of conventional, repetitive, wood or cold-formed steel framing members, and a maximum roof span of 30 linear feet. For the purposes of this subsection, "Height" is measured from the top surface of the lowest flooring to the highest interior overhead finish of the structure in determining whether a building exceeds the 20-foot height limitation. A basement floor is considered the lowest flooring when useable (e.g., for storage, living space, appliances, etc.)

(e) "Appurtenance" does not include a single family residential dwelling, farm building, or building less than 4,000 square feet in ground area or 20 feet in height.

(5) "Professional service" or "professional services," as used in ORS 672.005, means providing labor in a commercial or professional context, paid or unpaid, that does not produce a tangible commodity, but that requires a high level of training and proficiency.

(6) "Creative work," as used in ORS 672.005, applies to work provided in a commercial or professional context, paid or unpaid.

(7) "Testimony," as used in ORS 672.005 means a formal affirmation to a client or employer, paid or unpaid, of the quality or correctness of design or work provided, and excludes testimony in a court of law or before a public body.

(8) "Engineer," when used alone and not as part of the phrases "professional engineer" or "registered professional engineer," in ORS 672.002, and in conjunction with ORS 672.007(2)(b) and 672.020 or 672.045, refers to when the word "engineer" is used to claim or imply that an individual is registered to perform engineering work in Oregon.

(9) "Purports to be able to perform," as used in ORS 672.007, refers to purporting within the context of an offer, bid, advertisement, client relationship, or claim to a building official.

Stat. Auth.: ORS 670.310, 672.060, 672.107 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 4-2005, f. & cert. ef. 9-23-05; BEELS 1-2009, f. & cert. ef. 5-15-09; BEELS 8-2015, f. & cert. ef. 11-13-15; BEELS 3-2016, f. & cert. ef. 2-16-16; BEELS 3-2017(Temp), f. 6-12-17, cert. ef. 6-13-17 thru 12-8-17

Board of Geologist Examiners Chapter 809

Rule Caption: Adoption of 2017-2019 Operating Budget through amendments to Board Operating Budget and Fee Rules

Adm. Order No.: BGE 1-2017

Filed with Sec. of State: 6-5-2017

Certified to be Effective: 7-1-17

Notice Publication Date: 5-1-2017

Rules Amended: 809-010-0001, 809-010-0025

Subject: Amended the expenditure limit in the Operating Budget rule to reflect the Board's adopted 2017-2019 budget. Amended the Fee rule to increase the Board's application fee and select registration and renewal fees. Fee increases are to provide sufficient operating revenues for 2017-2019 while ensuring the continued financial

solvency of the Board at its current operational level. The fee increases are the first increases to application, registration and renewal fees implemented since 2007.

Rules Coordinator: Christine Valentine—(503) 566-2837

809-010-0001

Fees

Fees, as established by the Board of Geologist Examiners, are:

Examinations

(1) Fundamental Section of the national examination for Geologist registration — an amount equal to the actual cost of purchasing this portion of the exam from ASBOG.

(2) Practice Section of the national examination for Geologist registration — an amount equal to the actual cost of purchasing this portion of the exam from ASBOG.

(3) Examination for Engineering Geologist certification — \$200.00.

(4) Manual rescoring or proctored review:

(a) For ASBOG manual rescoring request only — an amount equal to the actual cost charged by ASBOG for this service;

(b) For ASBOG proctored review request only — an amount equal to the actual cost charged by ASBOG for this service; and

(c) In addition to (a) & (b) and for all Certified Engineering Geology exam-related requests, an amount payable to the Board for the actual administrative costs of providing the service, including any costs for staff or Board member time, copies, postage, and other processing costs, up to a maximum of \$100.00 payable to the Board per request.

Registration and Renewal

(5) Geologist-in-Training initial registration and annual renewal — \$60.00.

(6) Geologist initial registration and annual renewal — \$155.00.

(a) For a Geologist-in-Training issued an initial geologist registration, a prorated fee is refunded at the time of the initial issuance of registration to account for the remaining time period covered by the last annual registration fee paid for Geologist-in-Training registration.

(7) Engineering Geologist initial certification and annual renewal — \$110.00. Engineering Geologist must have a current Geologist registration.

(a) For a Certified Engineering Geologist, the initial certification fee for the specialty registration is prorated to set the renewal date concurrent with the registrant's existing geologist registration.

(8) Duplicate or replacement of lost, destroyed, or mutilated registration card or wall certificate — \$25.00.

(9) Restoration (late) fee if postmarked:

(a) One to ninety days after due date: \$25.00;

(b) Ninety-one to one-hundred seventy-nine days after due date: \$50;

(c) Over one-hundred seventy-nine days after due date: \$100.

(10) Renewal of registration by Geologist, if registrant is 70 years of age or over by renewal date — \$30.00.

(11) Renewal of certification by Engineering Geologist, if registrant is 70 years of age or over by renewal date — \$30.00.

Miscellaneous

(12) Application Fee — \$100.00. This fee is to accompany any application for registration or examination and any reapplication for examination.

(13) Temporary Permit Fee — \$100.00. This fee is to accompany any notification per 672.545(3)(b).

(14) File Maintenance Fee — \$25.00 per request. This fee is to cover maintaining examination files for passing examinees who do not register in Oregon.

(15) Fee for a list of all registrants — \$50.00.

Stat. Auth.: ORS 182.466, 670.310 & 672.705

Stats. Implemented: ORS 672.705

Hist.: GE 1(Temp), f. & ef. 11-3-77; GE 2, f. & ef. 12-13-77; GE 2-1979, f. 10-2-79, ef. 10-3-79; GE 1-1981, f. & ef. 8-3-81; GE 1-1982, f. & ef. 5-14-82; GE 2-1983(Temp), f. 10-14-83, ef. 11-1-83; GE 1-1984, f. & ef. 2-1-84; GE 1-1985, f. & ef. 7-1-85; GE 2-1986, f. & ef. 3-5-86; GE 1-1989, f. 12-18-89, cert. ef. 1-1-90; GE 1-1993(Temp), f. 3-1-93, cert. ef. 3-2-93; GE 2-1996, f. & cert. ef. 8-30-96; BGE 1-1999, f. & cert. ef. 6-17-99; BGE 2-2001, f. & cert. ef. 3-23-01; BGE 1-2002, f. & cert. ef. 2-6-02; BGE 3-2002, f. & cert. ef. 7-9-02; BGE 6-2004, f. & cert. ef. 8-5-04; BGE 2-2005, f. & cert. ef. 9-28-05; BGE 3-2005, f. & cert. ef. 12-7-05; BGE 2-2007, f. 6-25-07, cert. ef. 7-1-07; BGE 1-2011, f. 6-21-11, cert. ef. 7-1-11; BGE 2-2013, f. & cert. ef. 9-24-13; BGE 1-2016, f. & cert. ef. 9-20-16; BGE 1-2017, f. 6-5-17, cert. ef. 7-1-17

809-010-0025

Operating Budget

The Oregon State Board of Geologist Examiners hereby adopts by reference the 2017-2019 Biennial Budget of \$690,465 covering the period from July 1, 2017, and ending June 30, 2019. With Board approval, the Administrator of the Board may amend budgeted accounts as necessary within the approved budget of \$690,465 for the effective operation of the

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Board. The Board will not exceed the approved 2017–2019 Biennium Budget unless registrants are noticed, a public hearing is convened, and this rule is amended as required by ORS Chapter 182.462(1)(2). Copies of the budget are available from the Board's office.

Stat. Auth.: ORS 672.705, 182.462, & 670.310

Stats. Implemented: ORS 672.505 & 182.462

Hist.: BGE 1-1999, f. & cert. ef. 6-17-99; BGE 1-2001, f. & cert. ef. 3-23-01; BGE 2-2003, f. 6-13-03, cert. ef. 7-1-03; BGE 1-2005, f. & cert. ef. 8-15-05; BGE 2-2007, f. 6-25-07, cert. ef. 7-1-07; BGE 1-2009, f. 6-15-09, cert. ef. 7-1-09; BGE 1-2011, f. 6-21-11, cert. ef. 7-1-11; BGE 4-2012, f. 12-13-12, cert. ef. 12-21-12; BGE 1-2013, f. 6-3-13, cert. ef. 7-1-13; BGE 1-2015, f. 6-1-15, cert. ef. 7-1-15; BGE 1-2017, f. 6-5-17, cert. ef. 7-1-17

Board of Licensed Professional Counselors and Therapists Chapter 833

Rule Caption: Examination and clinical experience requirements for reciprocity method applicants.

Adm. Order No.: BLPCT 1-2017

Filed with Sec. of State: 6-9-2017

Certified to be Effective: 6-10-17

Notice Publication Date: 3-1-2017

Rules Amended: 833-020-0081, 833-030-0021, 833-040-0021

Subject: Firstly, this amendment updates the competency examination requirement for reciprocity applicants. The prior rule allowed reciprocity applicants who passed the exam ten years or more prior to applying for licensure in Oregon to complete 40 hours of continuing education in lieu of retaking the exam. This amendment updates the rule to reference Division 80, the continuing education requirements, which must be met for the applicant to qualify under this provision. Secondly, the amendment no longer allows reciprocity applicants who do not have minimal post-license clinical experience to substitute 1,200 of the 2,400 required post-graduate direct client contact experience hours for supervision, consulting and reporting. Reciprocity applicants with five or more years of post-license clinical experience will continue to be allowed to substitute such experience for 1,000 hours of required supervised direct client contact.

Rules Coordinator: LaRee' Felton — (503) 373-1196

833-020-0081

Examination

(1) All applicants must pass a competency exam and an Oregon law and rules exam approved by the Board.

(2) Applicants who have passed the competency exam within 10 years prior to applying for licensure are not required to retake the exam.

(3) Applicants applying by the reciprocity method who have passed the exam 10 years or more prior to applying for licensure in Oregon must:

(a) Retake the exam; or

(b) Document completion of continuing education activities which at minimum meet the requirements described in OAR chapter 833, division 80 within the 24 month period prior to application or initial licensure.

(4) For all application methods except for intern registration, failure to document passage of an acceptable competency examination or failure to register and attempt to pass the competency examination at least once per year will result in denial of licensure.

(5) Registered interns, after meeting the experience requirements for licensure, must register and attempt to pass the competency examination at least once per year, and must pass the competency exam within two years. Failure to comply with this rule will result in denial of licensure and termination of internship registration. The Board will only approve a subsequent reapplication under the direct method.

(6) Failure to achieve a passing score on the competency examination after taking the exam three times will result in denial of licensure. The Board will not review a reapplication until at least one year has elapsed from the date of the previous denial.

(7) Applicants must complete and return the Oregon law and rules examination within 30 days of the date the Board sends the examination to the applicant. Failure to complete and return the examination to the Board office will result in closure of the application. To be considered for licensure, the person must reapply pursuant to OAR 833-020-0071.

(8) The Board may extend the deadline to take an exam for good cause upon written request of the applicant, which must be received or post-marked prior to the exam deadline.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180

Stats. Implemented: ORS 675.785 - 675.835

Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 6-2010, f. 12-13-10, cert. ef. 1-1-11; BLPCT 1-2013, f. 1-11-13, cert. ef. 2-1-13; BLPCT 4-2016, f. & cert. ef. 10-10-16; BLPCT 1-2017, f. 6-9-17, cert. ef. 6-10-17

833-030-0021

Experience Requirements for Licensure as a Professional Counselor

(1) To qualify for licensure as a professional counselor under ORS 675.715(1)(c) and 675.720, an applicant must have completed at least three years, defined as 36 months, of supervised clinical counseling experience.

(2) To qualify for licensure through the internship registration method, supervised clinical experience must meet the requirements of OAR chapter 833, divisions 50 and 130.

(3) To qualify for licensure through direct or reciprocity method, supervised clinical experience must have consisted of no less than 2,400 supervised direct client contact hours of counseling. The supervised clinical counseling experience must have included any combination of the following:

(a) Post-graduate degree supervised experience completed in Oregon prior to June 30, 2002;

(b) Post-graduate degree supervised experience completed in another jurisdiction pursuant to the jurisdiction's laws and rules;

(c) Experience completed while a registered intern with the Board; or

(d) Up to one year of full-time supervised clinical experience and 400 hours of supervised direct client contact completed during the clinical portion of the qualifying graduate degree program.

(4) For reciprocity method applicants only, five or more years of post-license clinical experience may substitute for 1,000 hours of required supervised direct client contact.

(5) Direct client contact hours must have been face to face with a client or clients and/or contact via electronic communication consistent with OAR chapter 833, division 90.

(6) For direct and reciprocity methods, the experience must be a formal arrangement under the supervision of a person who holds a graduate-level state-issued license or registration, as a professional counselor or equivalent as determined by the Board such as a clinical psychologist, clinical social worker, or marriage and family therapist.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180

Stats. Implemented: ORS 675.785 - 675.835

Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 3-2010, f. 4-30-10, cert. ef. 5-3-10; BLPCT 4-2014, f. & cert. ef. 9-5-14; BLPCT 4-2016, f. & cert. ef. 10-10-16; BLPCT 1-2017, f. 6-9-17, cert. ef. 6-10-17

833-040-0021

Experience Requirements for Licensure as a Marriage and Family Therapist

(1) To qualify for licensure as a marriage and family therapist under ORS 675.715(1)(c) and 675.720, an applicant must have completed at least three years, defined as 36 months, of supervised clinical experience.

(2) To qualify for licensure through the internship registration method, supervised clinical experience must meet the requirements of OAR chapter 833, divisions 50 and 130.

(3) To qualify for licensure through direct or reciprocity method, supervised clinical experience must have:

(a) For those that apply to become a licensed marriage and family therapist before January 2, 2014, consisted of no less than 2,000 supervised direct client contact hours of therapy with at least 1,000 of those hours working with couples and families.

(b) For those who apply to become a licensed marriage and family therapist on or after January 2, 2014, consisted of no less than 2,400 supervised direct client contact hours of therapy with at least 1,000 of those hours working with couples and families.

(c) Included any combination of the following:

(A) Post-graduate degree supervised experience completed in Oregon prior to June 30, 2002;

(B) Post-graduate degree supervised experience completed in another jurisdiction pursuant to the jurisdiction's laws and rules;

(C) Experience completed while a registered intern with the Board; or

(D) Up to one year of full-time supervised clinical experience and 400 hours of supervised direct client contact completed during the clinical portion of the qualifying graduate degree program.

(4) For reciprocity method applicants only, five or more years of post-license clinical experience may substitute for 1,000 hours of required supervised direct client contact.

(5) Direct client contact hours must have been face to face with a client or clients and/or contact via electronic communication consistent with OAR chapter 833, division 90.

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(6) For direct and reciprocity methods, the experience must be a formal arrangement under the supervision of a person who is trained specifically in the systemic approach to couples and family therapy and holds a graduate-level state-issued license or registration, as a marriage and family therapist or equivalent as determined by the Board such as a clinical psychologist, clinical social worker, or professional counselor.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180
Stats. Implemented: ORS 675.785 - 675.835
Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 3-2010, f. 4-30-10, cert. ef. 5-3-10; BLPCT 6-2010, f. 12-13-10, cert. ef. 1-1-11; BLPCT 1-2014, f. & cert. ef. 1-8-14; BLPCT 4-2014, f. & cert. ef. 9-5-14; BLPCT 4-2016, f. & cert. ef. 10-10-16; BLPCT 1-2017, f. 6-9-17, cert. ef. 6-10-17

Rule Caption: Approval of the California Marriage and Family Therapist Written Clinical Examination.

Adm. Order No.: BLPCT 2-2017

Filed with Sec. of State: 6-12-2017

Certified to be Effective: 6-12-17

Notice Publication Date: 4-1-2017

Rules Amended: 833-040-0041

Rules Repealed: 833-040-0041(T)

Subject: This amendment adds the State of California Board of Behavioral Sciences' Marriage and Family Therapist Written Clinical Examination as an approved competency examination for licensure as a Licensed Marriage and Family Therapist (LMFT) in Oregon.

Rules Coordinator: LaRee' Felton—(503) 373-1196

833-040-0041

Examination Requirement for Licensure as a Marriage and Family Therapist

(1) All applicants for licensure as a marriage and family therapist must pass a competency examination and an Oregon law and rules examination pursuant to OAR 833-020-0081.

(2) To qualify for licensure as a marriage and family therapist under ORS 675.715(1)(d), an applicant must pass, or have passed within ten years prior to the date the application was received by the Board, an approved competency examination.

(3) The Board prescribes the following as approved competency examinations:

(a) The marital and family therapy examination of the Association of Marital and Family Therapy Regulatory Boards (AMFTRB); and

(b) The State of California Board of Behavioral Sciences' Marriage and Family Therapist Written Clinical Examination.

(4) Applicants applying via the reciprocity method may meet the competency exam requirements specified in 833-020-0081.

(5) To qualify to sit for the competency examination, a LMFT applicant must:

(a) Submit an application; and

(b) Meet the graduate program and coursework requirements prescribed in OAR 833-040-0011.

(6) Candidates will pay exam and exam administration fees to the prescribed examination providers.

(7) Passing scores will be:

(a) Established by the AMFTRB for applicants who plan to take the exam after making application for Oregon licensure; or

(b) Established by the agency verifying passage of its examination for applicants who have completed an approved alternative examination.

(8) The Board will notify examinees in writing of the results of their examination.

(9) Following passage of the approved competency examination, the Board requires passage of an Oregon state law and rules examination, with a passing score as determined by the Board.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180
Stats. Implemented: ORS 675.785 - 675.835
Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 3-2010, f. 4-30-10, cert. ef. 5-3-10; BLPCT 1-2013, f. 1-11-13, cert. ef. 2-1-13; BLPCT 4-2016, f. & cert. ef. 10-10-16; BLPCT 5-2016(Temp), f. & cert. ef. 12-12-16 thru 6-9-17; BLPCT 2-2017, f. & cert. ef. 6-12-17

Rule Caption: Code of ethics for counselors, therapists, interns and applicants.

Adm. Order No.: BLPCT 3-2017

Filed with Sec. of State: 6-12-2017

Certified to be Effective: 1-1-18

Notice Publication Date: 3-1-2017

Rules Adopted: 833-100-0012

Rules Amended: 833-050-0031, 833-050-0041, 833-050-0091, 833-075-0050, 833-075-0070, 833-100-0011, 833-100-0021

Rules Repealed: 833-100-0031, 833-100-0041, 833-100-0051, 833-100-0061, 833-100-0071

Subject: This amendment repeals the Board's current code of ethics and adopts the 2014 American Counseling Association (ACA) Code of Ethics as the code of professional conduct applicable to licensed professional counselors, licensed marriage and family therapists, registered interns, and applicants. The amended rules maintain several components of the current code, relocating those provisions to other locations in rules where they best fit. This includes the client bill of right details within the professional disclosure statement (PDS), informed consent waiver, supervisor competence and supervisee oversight, disclosure of client records during Board investigation, prohibition against withholding client records solely for nonpayment, and various reporting requirements. Some provisions are moved into a new preamble to the code. The amendment deletes the partial list of statutory exceptions to confidentiality, but maintains that licensees and interns must explain the exceptions to confidentiality to clients as a part of their PDS. There are also some minor revisions to improve rule consistency and clarity.

Rules Coordinator: LaRee' Felton—(503) 373-1196

833-050-0031

Registered Intern Professional Disclosure Statement

(1) Registered interns must furnish clients with a copy of a Board-approved professional disclosure statement before providing counseling or therapy.

(2) A professional disclosure statement must include the following information about the intern:

(a) Name, business address and telephone number;

(b) Name of the intern's supervisor(s);

(c) Philosophy and approach to counseling or marriage and family therapy, including reference to any codes of standards or ethics to which the intern subscribes;

(d) Formal education and training, title of highest relevant degree, the school that granted the degree, and major coursework;

(e) Supervision requirements;

(f) A statement indicating adherence to the Oregon Licensing Board's Code of Ethics set forth in OAR chapter 833, division 100;

(g) The standard fee for service, including discounted rates or sliding scale and a statement that no fees will be charged and no additional fee will be added to another set fee such as a hospital room daily charge;

(h) A bill of rights of clients, including a statement that consumers of counseling or therapy services offered by Oregon licensees have the right:

(A) To expect that an intern has met the minimum qualifications of training and experience required by state law;

(B) To examine public records maintained by the Board and to have the Board confirm credentials of an intern;

(C) To obtain a copy of the Code of Ethics;

(D) To report complaints to the Board;

(E) To be informed of the cost of professional services before receiving the services;

(F) To be assured of privacy and confidentiality while receiving services as defined by rule or law. Licensees must include an explanation of each exception to confidentiality;

(G) To be free from being the object of discrimination on any basis listed in the Code of Ethics while receiving services.

(i) The name, address, telephone number, and email address of the Oregon Board of Licensed Professional Counselors and Therapists; and

(j) A statement indicating the following: "Additional information about this registered intern is available on the Board's website: www.oregon.gov/oblpt."

(3) The professional disclosure statement must be accessible to people with disabilities.

(4) Registered interns will assist their clients to understand the information in the professional disclosure statement.

(5) Whenever an intern changes the professional disclosure statement, the new statement must be provided to the board for approval.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180

Stats. Implemented: ORS 675.785 - 675.835

Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 2-2012, f. 9-5-12, cert. ef. 10-1-12; BLPCT 4-2016, f. & cert. ef. 10-10-16; BLPCT 3-2017, f. 6-12-17, cert. ef. 1-1-18

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833-050-0041

Intern Professional Disclosure Statement and Informed Consent Waiver

Requests for exemptions to the professional disclosure statement and informed consent distribution requirements must be submitted in writing to the Board. The Board may grant written exemptions if:

(1) Registered intern can satisfy the Board that there is good cause to be exempt from specific requirements; or

(2) The intern is providing crisis response counseling or therapy.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180

Stats. Implemented: ORS 675.785 - 675.835

Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 4-2016, f. & cert. ef. 10-10-16; BLPCT 3-2017, f. 6-12-17, cert. ef. 1-1-18

833-050-0091

Supervisor's Responsibilities

(1) The supervisor must:

(a) Review and evaluate appropriateness of client population and caseload, individual charts, case records and management, diagnostic evaluation and treatment planning, and methodologies for keeping client confidentiality.

(b) Recommend that the intern refer clients to other therapists when client needs are outside the intern's scope of practice.

(c) Ensure that letterhead, business cards, advertisements and directory listings, brochures, and any other representation includes the appropriate title as described in OAR 833-050-0111(1)(a) and the supervisor's name and designation as "supervisor."

(d) Assist the intern in developing a plan to prepare for and complete the competency exam in a timely manner.

(e) Notify the Board within 14 days and explain any significant interruption to supervision or expected termination of the supervisory relationship.

(f) Create and maintain for at least three years a record of hours of supervision and notes for each supervision session contemporaneously as supervision occurs, and provide it to the Board within fourteen days of request.

(g) Be someone other than a spouse or relative by blood or marriage or a person with whom the intern has or had a personal relationship.

(h) Meet registered intern supervisor qualifications as required in OAR chapter 833, division 130.

(i) Submit a written evaluation of the intern's skills and progress every six months and at the conclusion of the plan. The report must include progress toward completion of the intern's plan. Supervisors may report to the Board at any time deemed necessary. Reports must be submitted on forms provided by the Board;

(2) If a supervisor has professional or ethical concerns about a supervisee being licensed, the supervisor must promptly notify the Board and provide the following information:

(a) Specific concerns regarding conduct or performance;

(b) Steps taken to address the concerns;

(c) A remedial action plan with measureable outcomes to address the concerns; and

(d) The intern's progress to address the concerns expressed by the supervisor.

(3) The Board may take any or all of the following actions to address concerns about registered interns:

(a) Identify a new supervisor to work with the intern;

(b) Require an assessment of the intern's mental and/or physical health;

(c) Require the intern to seek personal therapy;

(d) Extend the internship;

(e) Require additional training for the intern;

(f) Place internship on hold; or

(g) Deny the intern a license.

(4) A supervisor provides supervision only when the supervisor's professional competence is sufficient to meet the needs of the trainee or intern. A supervisor does not permit a trainee or intern under the supervisor's supervision to perform, nor purport to be competent to perform, professional services beyond the trainee's or intern's level of training and accepts responsibility for the effects of the actions of the trainee or intern of which they should be aware.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180

Stats. Implemented: ORS 675.785 - 675.835

Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 4-2016, f. & cert. ef. 10-10-16; BLPCT 3-2017, f. 6-12-17, cert. ef. 1-1-18

833-075-0050

Licensee Professional Disclosure Statement

(1) To be approved by the Board, the professional disclosure statement shall include the following information required by this section and ORS 675.755:

(a) The name, address and telephone number of the business;

(b) Philosophy and approach to counseling or marriage and family therapy, including reference to any codes of standards or ethics to which the licensee subscribes;

(c) A statement indicating adherence to the Oregon Licensing Board's Code of Ethics set forth in OAR chapter 833, division 100;

(d) A bill of rights of clients, including a statement that consumers of counseling or therapy services offered by Oregon licensees have the right:

(A) To expect that a licensee has met the minimum qualifications of training and experience required by state law;

(B) To examine public records maintained by the Board and to have the Board confirm credentials of a licensee;

(C) To obtain a copy of the Code of Ethics;

(D) To report complaints to the Board;

(E) To be informed of the cost of professional services before receiving the services;

(F) To be assured of privacy and confidentiality while receiving services as defined by rule or law. Licensees must include an explanation of each exception to confidentiality;

(G) To be free from being the object of discrimination on any basis listed in the Code of Ethics while receiving services.

(e) Formal education and training, title of highest relevant degree earned, school granting degree, and major coursework;

(f) Oregon licensure requirements for continuing education and supervision, as well as any significant post-degree work relating to professional practice;

(g) The standard fee for service, including discounted rates or sliding scale and a statement that no fees will be charged and no additional fee will be added to another set fee such as a hospital room daily charge;

(h) A statement indicating the following: "Additional information about this counselor or therapist is available on the Board's website: www.oregon.gov/oblpcct"; and

(i) The Board's name, address, telephone number, and email address.

(2) Prior to providing services, licensees must provide each client with a professional disclosure statement consistent with the content and in a format as specified in section (1).

(3) Licensees must make a reasonable effort to assist the client to understand the information presented in the disclosure statement as required by the Code of Ethics.

(4) The professional disclosure statement must be accessible to people with disabilities.

(5) Requests for exemptions to the professional disclosure statement and informed consent distribution requirements must be submitted in writing to the Board. The Board may grant written exemptions to:

(a) Applicants for licensure not practicing professional counseling or marriage and family therapy in Oregon, except those seeking registration as an intern;

(b) Licensees on inactive status or not practicing professional counseling or marriage and family therapy in Oregon;

(c) Licensees providing crisis response; and

(d) Licensees who have submitted a written request and can satisfy the Board that there is good cause to be exempt from specific requirements, and have received written exemption from the Board.

(6) If the licensee fails to provide the statement, the licensee may not charge the client a fee for services.

(7) Whenever a licensee changes a professional disclosure statement, the new statement must be presented to the Board for approval.

Stat. Auth.: ORS 675.785

Stats. Implemented: ORS 675.755 & 675.785

Hist.: BLPCT 4-2016, f. & cert. ef. 10-10-16; BLPCT 3-2017, f. 6-12-17, cert. ef. 1-1-18

833-075-0070

Client Records

(1) A licensed professional counselor and licensed marriage family therapist or registered intern must:

(a) Maintain client records for each client;

(b) Ensure that client records are legible;

(c) Keep records in a secure, safe, and retrievable condition; and

(d) Notify the Board if client records have been destroyed or lost.

(2) At a minimum, client records should be recorded concurrently with the services provided and must include:

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- (a) A formal or informal assessment of the client;
 - (b) Counseling goals or objectives; and
 - (c) Progress notes of therapy or counseling sessions.
- (3) Licensees and interns must retain client records for at least seven years from the date of the last session with the client.
- (4) Licensees and interns must disclose to the Board and its agents any client records that the Board and its agents consider germane to a disciplinary proceeding.
- (5) Licensees and interns do not withhold records under their control that are requested by the client solely because payment has not been received for services.

Stat. Auth.: ORS 675.705 - 675.835
Stats. Implemented: ORS 675.705 - 675.835
Hist.: BLPCT 4-2016, f. & cert. ef. 10-10-16; BLPCT 3-2017, f. 6-12-17, cert. ef. 1-1-18

833-100-0011

General Purpose and Scope

(1) The Board adopts the 2014 American Counseling Association (ACA) Code of Ethics as the code of professional conduct.

(2) The ACA code constitutes the standards against which the required professional conduct of licensed professional counselors and marriage and family therapists is measured. It has as its goal the welfare and protection of the individuals and groups with whom counselors and therapists work. This Code applies to the conduct of all licensees, registered interns and applicants, including the applicant's conduct during the period of education, training, and employment which is required for licensure. Violation of the provisions of this Code of Ethics will be considered unprofessional or unethical conduct and is sufficient reason for disciplinary action, including, but not limited to, denial of licensure.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180
Stats. Implemented: ORS 675.785 - 675.835
Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 3-2017, f. 6-12-17, cert. ef. 1-1-18

833-100-0012

Preamble

Licensees, interns and applicants must:

(1) Accept the obligation to conform to higher standards of conduct in the capacity of a counseling professional. The private conduct of a licensee is a personal matter to the degree that it does not compromise the fulfillment of professional responsibilities.

(2) Respect the traditions of the profession, and refrain from any conduct that would bring discredit to the profession.

(3) Correct, wherever possible, false, misleading, or inaccurate information and representations made by others concerning the licensee's qualifications, services, or products. Advertisements must not be false, fraudulent, or misleading to the public. Testimonials from current clients are not solicited for advertising or other purposes due to the client's vulnerability to undue influence.

(4) Not engage in any conduct likely to deceive or defraud the public or the Board, or participate in, condone, or become associated with dishonesty, fraud, deceit, or misrepresentation.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180
Stats. Implemented: ORS 675.785 - 675.835
Hist.: BLPCT 3-2017, f. 6-12-17, cert. ef. 1-1-18

833-100-0021

Responsibility

Licensees, interns and applicants must:

(1) Abide by the Code of Ethics and all applicable statutes and administrative rules regulating the practice of counseling or therapy or any other applicable laws, including, but not limited to, the reporting of abuse of children or vulnerable adults.

(2) Report to the Board within 30 days any civil lawsuit brought against the licensee, intern or applicant that relates in any way to the licensee, intern or applicant's professional conduct and notifies the Board of any disciplinary action or loss of a mental health professional or state license, certification, or registration.

(3) File a complaint with the Board within 10 days when the licensee, intern or applicant has reason to believe that another licensee, intern or applicant is or has been engaged in conduct that violates law or rules adopted by the Board. This requirement to file a complaint does not apply when the belief is based on information obtained in the course of a professional relationship with a client who is the other counselor or therapist. In that case, the client-therapist confidentiality supersedes the licensee or intern's requirement to report the other therapist. However, this does not relieve a licensee or intern from the duty to file any reports required by law concerning abuse of children or vulnerable adults.

(4) Not initiate, participate in, or encourage the filing of ethics complaints that are unwarranted or intended to harm a counselor/therapist rather than to protect clients or the public.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180
Stats. Implemented: ORS 675.785 - 675.835
Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 6-2010, f. 12-13-10, cert. ef. 1-1-11; BLPCT 2-2014, f. & cert. ef. 6-11-14; BLPCT 3-2017, f. 6-12-17, cert. ef. 1-1-18

Rule Caption: Renewal fee increase for registered interns and active status licensees.

Adm. Order No.: BLPCT 4-2017(Temp)

Filed with Sec. of State: 6-13-2017

Certified to be Effective: 7-1-17 thru 12-8-17

Notice Publication Date:

Rules Amended: 833-070-0011

Subject: This amendment changes the annual renewal fee for registered interns from \$80 to \$120, and changes the annual renewal fee for active status licensees from \$125 to \$165.

Rules Coordinator: LaRee' Felton—(503) 373-1196

833-070-0011

Fees

Fees established by the Board of Licensed Professional Counselors and Therapists are as follows:

(1) Application for licensure — \$175; applicants are also required to pay the actual cost to the Board to conduct a criminal background check.

(2) Initial license — \$125.

(3) Annual renewal of license:

(a) Active status license — \$165; or

(b) Inactive status license — \$100.

(4) Restoration fees:

(a) Delinquent fee for late renewals — \$50;

(b) Reactivation of inactive status license — \$125.

(5) Examination — Candidates will pay exam and exam administration fees to the prescribed examination providers.

(6) Duplicate license or certificate of licensure — \$5.

(7) Verification of licensure or examination scores for applicant or licensee to other licensing or certifying agencies — \$10.

(8) Annual renewal of registration as intern in accordance with OAR 833-120-0011 — \$120.

Stat. Auth.: ORS 675.785 - 675.835 & 676.160 - 676.180
Stats. Implemented: ORS 675.785 - 675.835
Hist.: BLPCT 1-2010, f. & cert. ef. 1-5-10; BLPCT 2-2010(Temp), f. 1-8-10, cert. ef. 1-11-10 thru 7-9-10; BLPCT 3-2010, f. 4-30-10, cert. ef. 5-3-10; BLPCT 1-2015, f. & cert. ef. 10-2-15; BLPCT 4-2016, f. & cert. ef. 10-10-16; BLPCT 4-2017(Temp), f. 6-13-17, cert. ef. 7-1-17 thru 12-8-17

Board of Massage Therapists Chapter 334

Rule Caption: Clarify Language in Rules for CE, Application, Classes & Establish Budget for 2017-2019 Biennium.

Adm. Order No.: BMT 1-2017

Filed with Sec. of State: 5-23-2017

Certified to be Effective: 7-1-17

Notice Publication Date: 4-1-2017

Rules Amended: 334-001-0012, 334-010-0005, 334-010-0046, 334-010-0050

Subject: Application: All application information for initial licensure must be received by the board within 12 months. Class Certification: modify the language to read approve since a governing body does not accredit. Continue Education: Clarify the CE language in OAR 334-010-0050 (7) to allow the rollover of Ethics taken in excess of the required 4 hours. Budget: establish the Oregon Board of Massage Therapists Budget for 2017-2019 Biennium of 1,910,000.

Rules Coordinator: Ekaette Udosenata—(503) 365-8657

334-001-0012

Budget

The Oregon Board of Massage Therapists hereby adopts, and fully incorporates herein, the Oregon Board of Massage Therapists' 2017-2019 Biennium budget of 1,910,000.

Stat. Auth.: SB 1127, ORS 183 & 687.121
Stats. Implemented: Section 6, (1) & (2)
Hist.: BMT 2-1999(Temp), f. & cert. ef. 9-17-99 thru 3-15-00; BMT 1-2000, f. & cert. ef. 1-12-00; BMT 2-2000, f. & cert. ef. 8-3-00; BMT 1-2001, f. & cert. ef. 5-29-01; BMT 2-2003,

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f. & cert. ef. 6-17-03; BMT 2-2005(Temp), f. & cert. ef. 6-24-05 thru 6-30-05; BMT 3-2005, f. 6-24-05, cert. ef. 7-1-05; BMT 1-2007, f. & cert. ef. 6-29-07; BMT 2-2007, f. & cert. ef. 7-3-07; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 3-2010, f. 12-22-10, cert. ef. 1-1-11; BMT 1-2011, f. & cert. ef. 4-21-11; BMT 2-2011, f. 6-29-11, cert. ef. 7-1-11; BMT 1-2013, f. 5-31-13, cert. ef. 7-1-13; BMT 1-2015, f. 3-12-15, cert. ef. 7-1-15; BMT 1-2017, f. 5-23-17, cert. ef. 7-1-17

334-010-0005

Applications

(1) All applications for licensure, inactive status, renewal, temporary permit, or a facility permit must be made on forms provided by the Board. Only applications that are completed and on Board approved forms, without alterations, must be accepted for filing and review by the Board.

(2) All applications made to the Board must be accompanied by the required fee.

(3) Applicants for Licensure must submit the following with their application:

(a) A copy of a valid government issued photo identification. This identification could be a valid driver's license, a current U.S. passport, immigration/naturalization papers, or a valid state identification card;

(b) An official certificate or transcript from the administering institutions, instructors, or programs showing successful completion of study and practice in the required subject matter and hours required by the Board.

(A) Official copies of transcripts or certificates presented to the Board in an envelope sealed by the program or institution and verified as sealed may be accepted directly from the applicant.

(B) If a program or institution granting credit is no longer in business, the Board must accept for review a copy of a certificate of completion, transcript or diploma in the required subject matter and hours. The Board may require additional information to verify the authenticity of such documents.

(i) Transcripts or certificates directly received from other states massage licensing boards will be accepted.

(c) A current photograph of the applicant.

(4) Transcripts must include a minimum of 625 hours of certified classes. The 625 hours must include the knowledge and skills identified in OAR 334-010-0047 competencies and must be comprised of:

(a) A minimum of 200 hours of Anatomy & Physiology, Pathology, and Kinesiology; and

(b) A minimum of 300 hours of Massage Theory and Practical Application, Clinical Practice, Business Development, Communication and Ethics, and Sanitation. Hydrotherapy may be included as part of the 300 hours.

(c) The additional 125 hours can be in Anatomy & Physiology, Pathology, Kinesiology, Massage or Bodywork Theory and Practical Application, Clinical Practice, Business Development, Communication, Ethics, Sanitation or Hydrotherapy.

(d) Hours can be calculated in clock hours or equivalent credit hours from an institution that substantially complies with the definition of credit hours in 34 CFR 600.2.

(5) If for any reason an applicant does not appear to be qualified for Licensure, the applicant must be so notified and invited to submit additional evidence that he/she is entitled to have his/her case considered for licensure.

(a) Applicants who are or have legally practiced massage and/or bodywork outside of the State of Oregon may be eligible to apply for the Credentialing Review Process.

(6) Applicants who apply for licensure on or before December 31, 2015 with a minimum of 500 hours of certified classes and do not take and pass the Oregon practical exam within 60 days of the date of their application must apply as a new applicant.

(7) All application documents for examination and licensure submitted in a language other than English must be accompanied by:

(a) An accurate translation of those documents into English;

(b) A notarized affidavit certifying that the translator is competent in both the language of the document and the English language; and

(c) A notarized affidavit certifying that the translation is a true and complete translation of the foreign language original.

(8) Any costs of translation of all documents required by the Board must be at the expense of the applicant.

(9) If the applicant discontinues the application process or fails to cooperate with the criminal history check process, then the application is considered incomplete.

(10) All information required for an initial license must be received within 12 months of the initial date of application. Thereafter, one must apply as a new applicant.

(11) Applicants for Facility Permit must submit the following with their application:

(a) If a natural person a copy of a valid government issued photo identification. This identification could be a valid driver's license, a current U.S. passport, immigration/naturalization papers, or a valid state identification card;

(b) If not a natural person:

(A) Copy of the Oregon Secretary of State Business registration, listing all owners and/or shareholders and

(B) Articles of Incorporation or shareholder agreements showing all percentages of ownership with appropriate owners identification including name and address.

Stat. Auth.: ORS 183, 687.121 & 182.456 - 182.472

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: HB 88, f. 3-16-56, Renumbered from 333-035-0002, MTB 1-1979, f. & ef. 5-22-79; MTB 2-1985, f. & ef. 1-23-85; MB 3-1985(Temp), f. & ef. 9-20-85; MTB 1-1986, f. & ef. 1-29-86; MTB 1-1990, f. & cert. ef. 4-20-90; MTB 1-1992, f. & cert. ef. 7-28-92, Sec. (7)(d) Renumbered from 334-010-0036; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 2-2002, f. & cert. ef. 5-8-02; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 3-2011(Temp), f. & cert. ef. 8-10-11 thru 2-6-12; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12; BMT 1-2013, f. 5-31-13, cert. ef. 7-1-13; BMT 2-2013, f. 11-26-13, cert. ef. 1-1-14; BMT 3-2015, f. 11-12-15, cert. ef. 1-1-16; BMT 1-2017, f. 5-23-17, cert. ef. 7-1-17

334-010-0046

Class Certification

(1) A class or program certified under ORS 687.051 must be offered by:

(a) In State Schools:

(A) A person or institution licensed as a private vocational school under ORS 345.010 to 345.074 or the equivalent licensing authority of another jurisdiction; or

(B) By a community college or university and approved by the Division of Vocational Education or the Department of Education, or the appropriate agency of another jurisdiction; or

(C) By a college accredited either by the Northwest Accreditation Commission or a like regional association or by a college in Oregon approved by the Oregon Office of Educational Policy and Planning for the purpose of granting degrees; and or

(D) Approved by the Board.

(b) Out of State Schools:

(A) Must be approved by the governing body where the school is located; or

(B) By a college accredited either by the Northwest Accreditation Commission or a like regional association for the purpose of granting degrees.

(2) In order for a class or program to be approved, the person or institute offering the class or program must apply to the Board. The application packet must contain, but not be limited to:

(a) A completed Board application;

(b) Verification of content meeting the Model Curriculum;

(c) Course descriptions and syllabi;

(d) The institution's Code of Ethics and fraternization policy;

(e) The method of evaluation to determine the student's successful completion of a class;

(f) The attendance requirements for students to successfully complete each class;

(g) Minimum qualifications for selecting instructors.

(3) The authorized representative of the certified class or program must notify the Board at least 60 days prior to any significant changes to information provided in the application process.

(4) A certified class or program must renew their certification on a regular basis as determined by the Board.

(5) Certification of the class or program may be revoked by the Board if it is determined that the requirements have not been or are no longer being met.

(6) Denial or revocation of a class or program certification by the Board, if otherwise not resolved, must be heard by the Board pursuant to ORS 183.411 to 183.497.

Stat. Auth.: ORS 687.121

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: MTB 1-1986, f. & ef. 1-29-86; MTB 1-1990, f. & cert. ef. 4-20-90; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12; BMT 2-2012, f. 12-4-12, cert. ef. 1-1-13; BMT 1-2017, f. 5-23-17, cert. ef. 7-1-17

ADMINISTRATIVE RULES

334-010-0050

Continuing Education

(1) The intent of Continuing Education is to protect the public by maintaining knowledge and skills of massage and/or bodywork. Each licensee must complete 25 hours of continuing education each renewal period. The continuing education hours must be from the following topics:

- (A) Massage and bodywork techniques;
- (B) Use of thermal modalities, topical preparations, mechanical assistive; devices/appliances;
- (C) Stretching and gymnastics that lengthen and shorten soft tissues;
- (D) Posture and movement assessment;
- (E) Massage and bodywork business practices;
- (F) Anatomy and physiology of the human body;
- (G) Kinesiology of the human body;
- (H) Pathology of the human body;
- (I) Professional Ethics, Boundaries or Communication;
- (J) Cultural competency
- (K) Body mechanics;
- (L) Somatic education; or
- (M) CPR/First Aid.

(a) At renewal time, each licensee must sign and submit a Board supplied CE form indicating they have completed 25 hours of continuing education. The Board may require proof of CE hours.

(b) Of the 25 hours, at least 15 must be contact hours of continuing education training or Board approved activities. At least 4 contact hours must be in Professional Ethics, Boundaries and/or Communication. The remaining 10 of 25 hours maybe contact or noncontact hours.

(2) The methods of obtaining continuing education contact hours shall include:

- (a) Attendance of courses, seminars, and workshops sponsored, certified by a licensed or accredited massage and bodywork training program;
- (b) Attendance of courses or activities for continuing education offered by a provider recognized by a massage and bodywork professional organization;
- (c) Attendance of courses provided by an accredited institution of higher education if topics are listed in OAR 334-010-0050(1)(A-M).
- (d) Attendance of courses, seminars, and workshops that meets the content requirement of OAR 334-010-0050(1)(A-M).
- (e) Individual interactive distance learning study courses with subject matter that is listed in OAR 334-010-0050(1)(E-J).
- (f) Courses in cardiopulmonary resuscitation/first aid if taken in the presence of an instructor;
- (g) Providing Board requested peer supervision or Board exam proctoring; One hour of CE contact credit will be given for each meeting/day.
- (h) Attendance at an Oregon Board of Massage Therapists board meeting, board committee meeting, board task force or serving on these committees/task forces. One hour of CE contact credit will be given for each meeting.

(3) The methods of obtaining continuing education non-contact hours shall include:

- (a) Publishing an article relating to massage and bodywork;
- (b) Self-study based on media (i.e. book/video, periodical, web based, DVD);
- (c) Courses or lectures on massage and bodywork which a licensee presents. A licensee may receive credit for presenting a course or lecture only one time per renewal period regardless of how many times the licensee presents the course or lecture.

(4) If the Continuing Education subject matter is not listed under OAR 334-010-0050(1) it will not be accepted for continuing education.

(5) The Oregon Board of Massage Therapists randomly selects a minimum of 10 percent of received monthly renewals for an audit.

(a) If selected for an audit you will have 30 days to complete the audit form and submit copies (not originals) of your Continuing Education certificates.

(b) If you fail to provide the requested information to the Board, within the 30 days, the Board may issue discipline per ORS 687.081 and 687.250.

(6) The continuing education requirement does not apply to a licensee's first license renewal.

(7) Continuing education must be completed within the renewal period. Contact hours taken and submitted during renewal in excess of the total number required may only be carried over to the next subsequent renewal period.

(a) Contact hours taken in Professional Ethics, Boundaries and/or Communication in excess of the four hour requirement may be carried over to the next subsequent renewal period.

(b) First renewal CE are not required to be submitted at the time of renewal, CE taken during the first renewal period may be submitted with second renewal.

(8) Continuing education records must be maintained by each licensee for a minimum of five years.

(9) If the Board finds indications of fraud or falsification of records, investigative action shall be taken. Findings may result in disciplinary action up to and including revocation of the licensee's license.

(10) Failure to complete continuing education hours by the time of renewal may result in revocation, suspension and/or denial of a license. Licensee has 30 days from date of notification of non-compliance to come into compliance. Failure to be in compliance may result in discipline of the licensee to practice massage.

Stat. Auth.: ORS 687.081, 687.121 & 687.122

Stats. Implemented: ORS 687.011, 687.051, 687.057, 687.061, 687.081, 687.086 & 687.121
Hist.: BMT 1-1998(Temp), f. & cert. ef. 2-3-98 thru 7-31-98; BMT 2-1998, f. & cert. ef. 7-22-98; BMT 1-2003, f. & cert. ef. 1-24-03; BMT 1-2004, f. & cert. ef. 2-23-04; BMT 2-2004(Temp), f. & cert. ef. 3-16-04 thru 9-7-04; Administrative correction, 9-28-04; BMT 3-2004(Temp), f. & cert. ef. 10-22-04 thru 4-19-05; BMT 1-2005, f. & cert. ef. 2-23-05; BMT 1-2006, f. & cert. ef. 1-5-06; BMT 1-2009, f. 2-13-09, cert. ef. 3-1-09; BMT 3-2009, f. & cert. ef. 7-2-09; BMT 4-2011, f. 12-1-11, cert. ef. 1-1-12; BMT 2-2013, f. 11-26-13, cert. ef. 1-1-14; BMT 1-2016, f. 5-23-16, cert. ef. 7-1-16; BMT 1-2017, f. 5-23-17, cert. ef. 7-1-17

Board of Psychological Examiners Chapter 858

Rule Caption: Code of professional conduct for licensees, residents and applicants.

Adm. Order No.: BPE 3-2017

Filed with Sec. of State: 5-24-2017

Certified to be Effective: 5-24-17

Notice Publication Date: 4-1-2017

Rules Amended: 858-010-0075

Subject: This amendment adopts the most recent version of the American Psychological Association's "Ethical Principles of Psychologists and Code of Conduct," effective January 1, 2010 with amendment as of January 1, 2017, as the code of professional conduct applicable to all licensees, residents and applicants of the Board.
Rules Coordinator: LaRee Felton—(503) 373-1196

858-010-0075

Code of Professional Conduct

The Board adopts the American Psychological Association's (APA) "Ethical Principles of Psychologists and Code of Conduct," effective January 1, 2010 with amendment as of January 1, 2017, as the code of professional conduct applicable to all licensees, residents and applicants of the Board.

[Publications referenced are available at <http://www.apa.org/ethics/>]

Stat. Auth.: ORS 675.030, 675.040, 675.045, 675.050, 675.065 & 675.110

Stats. Implemented: ORS 675.030, 675.040, 675.045, 675.050, 675.065 & 675.110

Hist.: PE 6, f. 12-19-73, ef. 1-11-74; PE 1-1982, f. 4-13-82, ef. 6-1-82; PE 2-1982, f. & ef. 7-23-82; PE 4-1989(Temp), f. & cert. ef. 11-28-89; PE 1-1990, f. & cert. ef. 2-16-90; PE 3-1992, f. & cert. ef. 7-14-92; PE 5-1993, f. & cert. ef. 10-5-93; PE 1-1996, f. & cert. ef. 6-25-96; PE 1-1997, f. & cert. ef. 6-17-97; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 3-2002(Temp), f. & cert. ef. 4-15-02 thru 10-12-02; BPE 4-2002, f. & cert. ef. 10-11-02; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08; BPE 3-2014, f. & cert. ef. 6-2-14; BPE 3-2017, f. & cert. ef. 5-24-17

Bureau of Labor and Industries Chapter 839

Rule Caption: Amends the prevailing rates of wages for the period beginning July 1, 2017

Adm. Order No.: BLI 2-2017

Filed with Sec. of State: 6-12-2017

Certified to be Effective: 7-1-17

Notice Publication Date: 6-1-2017

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, 2017.

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

ADMINISTRATIVE RULES

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 the publication of the Bureau of Labor and Industries entitled Prevailing Wage Rates for Public Works Contracts in Oregon dated July 1, 2017, 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, 2017, and the effective dates of the applicable special wage determination and rates amendments.

(2) Copies of Prevailing Wage Rates for Public Works Contracts in Oregon dated July 1, 2017, are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Portland and Salem. Copies are also available on the bureau's webpage at 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. 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; BLI 25-2007, f. 9-19-07, cert. ef. 9-20-07; BLI 26-2007, f. 9-25-07, cert. ef. 9-26-07; BLI 27-2007, f. 9-25-07, cert. ef. 10-1-07; BLI 28-2007, f. 9-26-07, cert. ef. 10-1-07; BLI 31-2007, f. 11-20-07, cert. ef. 11-23-07; BLI 34-2007, f. 12-27-07, cert. ef. 1-1-08; BLI 1-2008, f. & cert. ef. 1-4-08; BLI 2-2008, f. & cert. ef. 1-11-08; BLI 3-2008, f. & cert. ef. 2-21-08; BLI 6-2008, f. & cert. ef. 3-13-08; BLI 8-2008, f. 3-31-08, cert. ef. 4-1-08; BLI 9-2008, f. & cert. ef. 4-14-08; BLI 11-2008, f. & cert. ef. 4-24-08; BLI 12-2008, f. & cert. ef. 4-30-08; BLI 16-2008, f. & cert. ef. 6-11-08; BLI 17-2008, f. & cert. ef. 6-18-08; BLI 19-2008, f. & cert. ef. 6-26-08; BLI 20-2008, f. & cert. ef. 7-1-08; BLI 23-2008, f. & cert. ef. 7-10-08; BLI 26-2008, f. & cert. ef. 7-30-08; BLI 28-2008, f. & cert. ef. 9-3-08; BLI 30-2008, f. & cert. ef. 9-25-08; BLI 31-2008, f. 9-29-08, cert. ef. 10-1-08; BLI 32-2008, f. & cert. ef. 10-8-08; BLI 36-2008, f. & cert. ef. 10-29-08; BLI 41-2008, f. & cert. ef. 11-12-08; BLI 42-2008, f. & cert. ef. 12-1-08; BLI 44-2008, f. & cert. ef. 12-29-08; BLI 45-2008, f. 12-31-08, cert. ef. 1-1-09; BLI 1-2009, f. & cert. ef. 1-6-09; BLI 2-2009, f. & cert. ef. 1-12-09; BLI 4-2009, f. & cert. ef. 2-11-09; BLI 6-2009, f. & cert. ef. 3-17-09; BLI 7-2009, f. & cert. ef. 3-24-09; BLI 8-2009, f. 3-31-09, cert. ef. 4-1-09; BLI 10-2009, f. 6-9-09, cert. ef. 6-10-09; BLI 11-2009, f. 6-29-09, cert. ef. 6-30-09; BLI 12-2009, f. 6-29-09, cert. ef. 7-1-09; BLI 13-2009, f. & cert. ef. 7-1-09; BLI 14-2009, f. & cert. ef. 7-10-09; BLI 15-2009, f. & cert. ef. 7-16-09; BLI 16-2009, f. & cert. ef. 7-22-09; BLI 17-2009, f. & cert. ef. 7-29-09; BLI 19-2009, f. & cert. ef. 8-18-09; BLI 20-2009, f. & cert. ef. 9-14-09; BLI 21-2009, f. & cert. ef. 9-21-09; BLI 22-2009, f. 9-30-09, cert. ef. 10-1-09; BLI 23-2009, f. & cert. ef. 10-8-09; BLI 24-2009, f. & cert. ef. 11-12-09; BLI 25-2009, f. & cert. ef. 11-23-09; BLI 29-2009, f. 12-31-09, cert. ef. 1-1-10; BLI 1-2010, f. 1-8-10, cert. ef. 1-12-10; BLI 2-2010, f. 1-11-10, cert. ef. 1-13-10; BLI 3-2010, f. & cert. ef. 1-19-10; BLI 4-2010, f. & cert. ef. 1-27-10; BLI 13-2010, f. & cert. ef. 4-1-10; BLI 17-2010, f. 6-29-10, cert. ef. 7-1-10; BLI 20-2010, f. & cert. ef. 10-1-10; BLI 24-2010, f. 12-30-10, cert. ef. 1-1-11; BLI 2-2011, f. 3-25-11, cert. ef. 4-1-11; BLI 4-2011, f. 6-30-11, cert. ef. 7-1-11; BLI 7-2011, f. & cert. ef. 10-12-11; BLI 10-2011, f. 12-30-11, cert. ef. 1-1-12; BLI 4-2012, f. & cert. ef. 3-29-12; BLI 6-2012, f. & cert. ef. 7-2-12; BLI 10-2012, f. 9-26-12, cert. ef. 10-1-12; BLI 13-2012, f. 12-28-12, cert. ef. 1-1-13; BLI 1-2013, f. & cert. ef. 3-25-13; BLI 2-2013, f. & cert. ef. 9-20-13; BLI 3-2013, f. 9-30-13, cert. ef. 10-1-13; BLI 5-2013, f. 12-16-13, cert. ef. 1-1-14; BLI 3-2014, f. & cert. ef. 4-2-14; BLI 8-2014, f. 6-13-14, cert. ef. 7-1-14; BLI 11-2014, f. 9-24-14, cert. ef. 10-1-14; BLI 15-2014, f. 12-9-14, cert. ef. 1-1-15; BLI 3-2015, f. 3-13-15, cert. ef. 4-1-15; BLI 7-2015, f. 6-15-15, cert. ef. 7-1-15; BLI 13-2015, f. 9-3-15, cert. ef. 10-1-15; BLI 17-2015, f. 12-10-15, cert. ef. 1-1-16; BLI 1-2016, f. 3-25-16, cert. ef. 4-1-16; BLI 3-2016, f. 6-10-16, cert. ef. 7-1-16; BLI 5-2016, f. & cert. ef. 8-16-16; BLI 7-2016, f. 9-13-16, cert. ef. 10-1-16; BLI 8-2016, f. & cert. ef. 10-7-16; BLI 11-2016, f. 12-16-16, cert. ef. 1-1-17; BLI 1-2017, f. 3-15-17, cert. ef. 4-1-17; BLI 2-2017, f. 6-12-17, cert. ef. 7-1-17

Department of Agriculture, Oregon Sweet Cherry Commission Chapter 669

Rule Caption: Change the due date for assessments on fresh market sweet cherries.

Adm. Order No.: OSCC 1-2017

Filed with Sec. of State: 6-9-2017

Certified to be Effective: 6-9-17

Notice Publication Date: 4-1-2017

Rules Amended: 669-010-0025

Subject: This amendment will revise the due date for Fresh Market sweet cherry assessments.

Rules Coordinator: Dana Branson—(541) 386-5761

669-010-0025

Reports and Payment of Assessment Moneys

(1) First purchasers and handlers must submit completed and signed assessment reports on commission approved forms. Assessment reports will include all purchases or deliveries to a first purchaser or handler of sweet cherries (net paid weight). The assessments will be reported as follows:

(a) Cherries destined for fresh market that were purchased or delivered, the assessment report is due in the commission office postmarked on or before October 1st. If a final report cannot be completed within this time frame an estimated report is due by the date specified above. If an estimate is used, the final report is due by November 1st. (Also see item 4 below.)

(b) Cherries destined for brining, canning, and or freezing that were purchased or delivered to the first purchaser before December 1st, the assessment report is due in the commission office postmarked on or before December 15th. Cherries destined for brining, canning, and or freezing that were purchased or delivered to the first purchaser after December 1st, the assessment report is due in the commission office postmarked on or before May 15th.

(2) When a first purchaser or handler has completed, signed, and forwarded a report covering his or her final purchase of sweet cherries for the crop season, he or she may mark such report in large letters "FINAL REPORT FOR THIS CROP SEASON." No further reports are necessary by such first purchaser unless or until additional purchases are made.

(3) When a first purchaser lives or has his or her office in another state, or is a federal or governmental agency, the producer will report to this Commission all sales made to such purchaser as required by section (1) of this rule and will pay the assessment directly to the Commission, unless such first purchaser voluntarily makes the proper deduction and remits the proceeds to this Commission.

(4) At the time that reports are due the Commission from the first purchaser or first handler, as required in section (1) of this rule, the first purchaser or first handler will attach or forward payment to the Commission for the assessment due as set forth in each such report. If an estimated report is used the payment accompanying it must equal a minimum 75% of the total assessments due for the crop year as calculated in the final report to avoid penalty and interest for late payment. The forms will be signed by the first purchaser or first handler and completely filled out, and will include, in addition to all other required information and figures, the name and complete mailing address of each producer, the crop year, the tonnage and amount of assessment deducted and withheld.

(5) Any producer who performs the handling or processing functions on all or part of his or her production of the commodity, which normally would be performed by another person as the first purchaser thereof, will report his or her sales of such commodity of his or her own production on forms provided by, and pay the assessment moneys directly to, the Commission, unless the first purchaser from such producer voluntarily makes the proper deduction and remits the proceeds to the Commission. (Examples would be the sale by a producer direct to a peddler, to a retail store, etc.)

Stat. Auth.: ORS 576

Stats. Implemented: ORS 576

Hist.: RSC 1(Temp), f. 6-11-74, f. 6-15-74 thru 10-12-74; RSC 4, f. 11-15-74, ef. 12-11-74; RSC 1-1985, f. & ef. 9-17-85; OSC 1-1989, f. 5-24-89, cert. ef. 6-1-89; OSC 1-1989, f. 5-24-89, cert. ef. 6-1-89; OSCC 1-2001, f. & cert. ef. 2-16-01; OSCC 1-2004, f. & cert. ef. 1-13-04; OSCC 2-2005, f. 8-23-05, cert. ef. 8-26-05; OSCC 1-2017, f. & cert. ef. 6-9-17

ADMINISTRATIVE RULES

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

Rule Caption: Adopt federal OSHA and state amendments: Walking-Working Surfaces and PPE (Fall Protection Systems).

Adm. Order No.: OSHA 2-2017

Filed with Sec. of State: 5-16-2017

Certified to be Effective: 11-1-17

Notice Publication Date: 3-1-2017

Rules Adopted: 437-002-2021, 437-002-2022, 437-002-2027, 437-002-2031

Rules Amended: 437-002-0005, 437-002-0020, 437-002-0022, 437-002-0026, 437-002-0032, 437-002-0033, 437-002-0060, 437-002-0120, 437-002-0134, 437-002-0182, 437-002-0220, 437-002-0300, 437-002-0309, 437-002-0310, 437-002-0311, 437-002-0312, 437-002-0314, 437-002-2306, 437-002-2307

Rules Repealed: 437-002-0023, 437-002-0027, 437-002-0028, 437-002-0030, 437-002-0031, 437-002-0072, 437-002-0074, 437-002-0076

Subject: On February 24, 2017 Oregon OSHA proposed to revise the existing walking-working surface and personal protective equipment rules for general industry. This proposal was required to harmonize Oregon OSHA's existing Division 2 regulations with the new Federal OSHA's rule titled: "Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems)" as published in the Federal Register on November 18, 2016. Federal OSHA's general industry final rule revised the previous walking-working surfaces standards within 29 CFR part 1910, subpart D and created a new standard and two new non-mandatory appendixes for fall protection systems within 29 CFR part 1910, subpart I. In addition to the significant changes made to Subparts D and I, federal OSHA also amended standards in 29 CFR part 1910, subparts F, N, and R to create uniformity across all of the affected subparts where walking-working surfaces and personal fall protection systems are addressed. Oregon OSHA's proposal made significant revisions to Subdivision 2/D (Walking-Working Surfaces) and Subdivision 2/I (Personal Protective Equipment) of Chapter 437, Division 2 including a proposal for rope access systems. Subsequently, since many existing Oregon OSHA regulations are based on those within 2/D and 2/I, the following Division 2 subdivisions also were amended in the February 24th proposal: 2/A, 2/F, 2/L, 2/N, 2/R, and 2/RR.

Four public hearings were held during March and April of 2017. Oregon OSHA received oral testimony at three of the public hearings in addition to written comments. Several comments received supported the overall rule making. Several comments opposed specific sections of the overall rulemaking. Major topics Oregon OSHA received comment on were; impacts of limiting acceptable standard guardrail heights to 42 inches +/- 3 inches, use of body belts in travel restraint systems, inspection of permanent mount lifeline systems, fall protection for fixed ladders and the associated inspections, duty to have fall protection when exposed to unprotected sides and edges, duty to have fall protection while exposed to walking-working surfaces not otherwise addressed by proposed 1910.28(b), and rope descent/access systems.

Oregon OSHA considered all comments received. Oregon OSHA, based on comments received, made adjustments to proposed 437-002-2027 Rope Descent & Rope Access Systems. Changes include separating the rules for rope descent from those for rope access with the exception of anchorages which both systems share in the final rule. Furthermore, the rope descent portion of the rule is no longer the foundation for the rope access portion. The proposed "assessment of need" for rope access work was removed, a rope access program administrator was added, a section listing minimum capacity requirements for rope access specific equipment was added, and a section establishing exceptions to 1910.140 Fall Protection was added when rope access work is conducted. Finally, Oregon OSHA added language to Division 2/I (Personal Protective Equipment) to

permit general industry employers to use anchorages for travel restraint systems that meet the same capacity requirements previous afforded to construction employers in the construction regulations (Division 3/M).

Division 2, Subdivision D (Walking- Working Surfaces)

1910.21 Definitions. Oregon OSHA maintained this rule number; however, the title "Definitions" and all associated rule language was removed and replaced in accordance with the new federal 1910.21 language as published in the Federal Register on November 18, 2016. The title, as amended by federal OSHA and proposed by Oregon OSHA, is now "Scope and Definitions". Oregon OSHA deviated once from the federal rule by not adopting the definition of "low-sloped roof". For years, Oregon OSHA has defined low-slope roof more conservatively than federal OSHA.

1910.22 General Requirements. Oregon OSHA maintained this rule number; however, all associated rule language was removed and replaced in accordance with the new federal 1910.22 language as published by federal OSHA in the Federal Register on November 18, 2016. The title did not change.

1910.23 Guarding Floor and Wall Openings and Holes. Oregon OSHA maintained this rule number; however, the title "Guarding Floors and Walls Openings and Holes" and all associated rule language was removed and replaced in accordance with the new federal 1910.23 language as published by federal OSHA in the Federal Register on November 18, 2016. The title, as amended by federal OSHA and adopted by Oregon OSHA, is now "Ladders". Oregon OSHA deviated once from the federal rule by not adopting 1910.23(c)(2) which required stepladders and combination ladders used in a stepladder mode to be equipped with a metal spreader or locking device that securely holds the front and back sections in an open position. Since federal OSHA specifically defines "stepladder" in the new 1910.21(b), Oregon OSHA felt that limiting this requirements only to those portable ladders that meet the definition of a stepladder was not sufficiently protective. Oregon OSHA addressed this concern in the existing Oregon initiated rule OAR 437-002-0026 which is discussed further below.

1910.24 Fixed Industrial Stairs. Oregon OSHA maintained this rule number; however, the title "Fixed Industrial Stairs" and all associated rule language was replaced in accordance with the new federal 1910.24 language as published by federal OSHA in the Federal Register on November 18, 2016. The title, as amended by federal OSHA and proposed by Oregon OSHA, is now "Step Bolts and Manhole Steps". Oregon OSHA adopted alternative delayed effective dates when compared to the new federal rule as Oregon employers need time to understand and implement these changes.

1910.25 Portable Wood Ladders - Repealed. Oregon OSHA maintained this rule number; however, the title "Portable Wood Ladders - Repealed" and all associated rule language was removed and replaced in accordance with the new federal 1910.25 language as published by federal OSHA in the Federal Register on November 18, 2016. The title, as amended by federal OSHA and proposed by Oregon OSHA, is now "Stairways". Oregon OSHA adopted alternative delayed effective dates when compared to the new federal rule as Oregon employers need time to understand and implement these changes.

1910.26 Portable Metal Ladders - Repealed. Oregon OSHA maintained this rule number; however, the title "Portable Metal Ladders - Repealed" and all associated rule language was removed and replaced in accordance with the new federal 1910.26 language as published by federal OSHA in the Federal Register on November 18, 2016. The title, as amended by federal OSHA and proposed by Oregon OSHA, is now "Dockboards". Oregon OSHA adopted alternative delayed effective dates when compared to the new federal rule as Oregon employers need time to understand and implement these changes.

1910.27 Fixed Ladders - Repealed. Oregon OSHA maintained this rule number; however, the title "Fixed Ladders - Repealed" and all associated rule language was removed and replaced in accordance

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with the new federal 1910.27 language as published by federal OSHA in the Federal Register on November 18, 2016. The title, as amended by federal OSHA and adopted by Oregon OSHA, is now “Scaffolds and Rope Descent Systems”. 1910.27(a) now directs employers to see the scaffolding regulations in Oregon OSHA’s Division 3, Subdivision L regulations. Oregon OSHA deviated significantly from the federal rule by not directly adopting 1910.27(b) Rope descent systems. Instead, Oregon OSHA adopted a new Oregon initiated rule identified as 437-002-2027 Rope Descent and Rope Access Systems which is further discussed below under 437-002-2027. Oregon OSHA adopted alternative delayed effective dates when compared to the new federal rule as Oregon employers need time to understand and implement these changes.

1910.28 Safety Requirements for Scaffolding. Oregon OSHA maintained this rule number; however, the title “Safety Requirements for Scaffolding” and all associated rule language was removed and replaced in accordance with the new federal 1910.28 language as published by federal OSHA in the Federal Register on November 18, 2016. The title, as amended by federal OSHA and adopted by Oregon OSHA, is now “Duty to have Fall Protection and Falling Object Protection”. Oregon OSHA deviated once from the federal rule by not adopting 1910.28(b)(1)(ii). Oregon OSHA adopted alternative delayed effective dates when compared to the new federal rule as Oregon employers need time to understand and implement these changes.

1910.29 Manually Propelled Mobile Ladder Stands and Scaffolds (Towers). Oregon OSHA maintained this rule number; however, the title “Manually Propelled Mobile Ladder Stands and Scaffolds (Towers)” and all associated rule language was removed and replaced in accordance with the new federal 1910.29 language as published by federal OSHA in the Federal Register on November 18, 2016. The title, as amended by federal OSHA and adopted by Oregon OSHA, is now “Fall Protection Systems and Falling Object Protection - Criteria and Practices”. Oregon OSHA adopted alternative delayed effective dates when compared to the new federal rule as Oregon employers need time to understand and implement these changes.

1910.30 Other Working Surfaces. Oregon OSHA maintained this rule number; however, the title “Other Working Surfaces” and all associated rule language was removed and replaced in accordance with the new federal 1910.30 language as published by federal OSHA in the Federal Register on November 18, 2016. The title, as amended by federal OSHA and adopted by Oregon OSHA, is now “Training Requirements”. Oregon OSHA adopted alternative delayed effective dates when compared to the new federal rule as Oregon employers need time to understand and implement these changes.

437-002-0022 Additional Oregon General Requirements. This Oregon initiated rule has been in place since 1994. Oregon OSHA has maintained the rule’s language and intent, only removing from this rule that which was essentially duplicative with the new federal 1910.22 language as published by federal OSHA in the Federal Register on November 18, 2016. Oregon OSHA added a scope and application to this rule and recrafted the rule’s language to follow the same “The employer must ensure...” format used in the new federal rule.

437-002-0023 Covers for Holes. This Oregon initiated rule has been in place since 2013. Oregon OSHA repealed the rule in its entirety as the language and intent is duplicative with the new federal 1910.29 Fall Protection Systems and Falling Object Protection - Criteria and Practices language as published by federal OSHA in the Federal Register on November 18, 2016.

437-002-0026 Portable Ladders. This Oregon initiated rule has been in place since 1994. Oregon OSHA removed much of the existing language as it is now duplicative of the new federal 1910.23 Ladders language as published by federal OSHA in the Federal Register on November 18, 2016. That which was not duplicative has been maintained. Oregon OSHA added a scope and application to this rule and recrafted the rule’s language to follow the same “The employ-

er must ensure...” format used in the new federal rule. Oregon OSHA added three new definitions for terms that are used in 437-002-0026. Furthermore, Oregon OSHA updated the ANSI A14 references in the ladder selection section of the rule from the 1990’s editions to the most current editions available, which are from 2007. Finally, the new federal rule, 1910.23(c)(2), which was not adopted by Oregon OSHA in the new federal 1910.23 Ladders, has been added to this rule and expanded to include all self-supporting ladders, not just stepladders as defined in 1910.21(b).

437-002-0027 Fixed Ladders. This Oregon initiated rule has been in place since 1999. Oregon OSHA repealed the rule in its entirety as its language and intent is mostly duplicative with the new federal 1910.23 Ladder language as published by federal OSHA in the Federal Register on November 18, 2016.

437-002-0028 Guardrails and Toeboards. This Oregon initiated rule has been in place since 1990. Oregon OSHA repealed the rule in its entirety as its language and intent was duplicative with the new federal 1910.27 Scaffolds and Rope Descent Systems language as published by federal OSHA in the Federal Register on November 18, 2016.

437-002-0030 Floors. This Oregon initiated rule has been in place in its current form since 1994. Oregon OSHA repealed the rule in its entirety as its language and intent was duplicative with the new federal 1910.22 General Requirements language as published by federal OSHA in the Federal Register on November 18, 2016.

437-002-0031 Provisions for Window Cleaners. This Oregon initiated rule has been in place in its current form since 1990. Oregon OSHA repealed the rule in its entirety as its language and intent was duplicative with the new federal 1910.140 Personal Fall Protection Systems language as published by federal OSHA in the Federal Register on November 18, 2016.

437-002-2021 Oregon Additional Definitions. Oregon OSHA promulgated a new Oregon initiated rule where Oregon OSHA defines “low-slope roof”. Oregon OSHA is not adopting the federal definition of “low-slope roof” as found in the new 1910.21(b) Definitions as published by federal OSHA in the Federal Register on November 18, 2016.

437-002-2027 Rope Descent and Rope Access Systems. As discussed above in 1910.27, Oregon OSHA did not directly adopt the federal rule 1910.27(b) Rope Descent Systems as published in the Federal Register on November 18, 2016. Instead, Oregon OSHA views this rulemaking as a unique and timely opportunity to include rope access systems and methods, which are similar, yet significantly different from rope descent systems into this overall Walking-Working Surface rulemaking process. Rope access methods, which were not addressed by the new federal rules, are well established in today’s general industry environment in Oregon. Rope descent and rope access are separate activities with separate rule sections; however, in the final rule, both share the same requirements for anchorages. The final rope descent rule is consistent with the final federal rule with the addition of auto-locking descent control devices, life-safety rated industrial synthetic ropes, and pre-work briefings. The final rope access rule establishes criteria for a written rope access program, program administration, training, evaluation, component performance criteria, and establishing specific exceptions to 1910.140 Fall Protection when engaged in rope access work.

Division 2, Subdivision F (Powered Platforms)

1910.66 Powered Platforms for Building Maintenance. This rule has been in place in its current form in Oregon since 2007. Oregon OSHA amended this rule to bring the walking-working surface portions and fall protection portions into harmony with the final changes as published by federal OSHA in the Federal Register on November 18, 2016.

1910.67 Vehicle-mounted Elevating and Rotating Work Platforms. This rule has been in place in its current form in Oregon since 1997. Oregon OSHA amended this rule to bring the fall protection portions

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into harmony with the final changes as published by federal OSHA in the Federal Register on November 18, 2016.

1910.68 Manlifts. This rule has been in place in its current form in Oregon since 2008. Oregon OSHA amended this rule to bring the walking-working surface portions into harmony with the final changes as published by federal OSHA in the Federal Register on November 18, 2016.

437-002-0072 Manually Propelled Elevating Aerial Platforms. Oregon OSHA repealed this Oregon initiated rule to prevent duplicative rule language and reduce confusion for employers. Oregon OSHA directs general industry employers to the construction industry counterpart of this rule in Division 3/L through a new Oregon initiated rule identified as 437-002-2022 Additional Oregon Rules for Powered Platforms. This action keeps Oregon OSHA in step with federal OSHA's language for scaffolds used in general industry as published in the Federal Register on November 18, 2016.

437-002-0074 Scissor Lifts - Self-Propelled Elevating Work Platforms. Oregon OSHA repealed this Oregon initiated rule to prevent duplicative rule language and reduce confusion for employers. Oregon OSHA directs general industry employers to the construction industry counterpart of this rule in Division 3/L through a new Oregon initiated rule identified as 437-002-2022 Additional Oregon Rules for Powered Platforms. This action keeps Oregon OSHA in step with federal OSHA's language for scaffolds used in general industry as published in the Federal Register on November 18, 2016.

437-002-0076 Boom Supported Elevating Work Platforms. Oregon OSHA repealed this Oregon initiated rule to prevent duplicative rule language and reduce confusion for employers. Oregon OSHA directs general industry employers to the construction industry counterpart of this rule in Division 3/L through a new Oregon initiated rule identified as 437-002-2022 Additional Oregon Rules for Powered Platforms. This action keeps Oregon OSHA in step with federal OSHA's language for scaffolds used in general industry as published in the Federal Register on November 18, 2016.

437-002-2022 Additional Oregon Rules for Powered Platforms. Oregon OSHA adopted a new Oregon initiated rule that directs general industry employers who use powered platforms other than those covered by 1910.66, 1910.67 and 1910.68 to the three construction industry powered platform counterparts within Division 3/L. This rule is needed because of the repealed rules 437-002-0072, 437-002-0074, and 437-002-0076 within Division 2/F. This action keeps Oregon OSHA in step with federal OSHA's language for scaffolds used in general industry as published in the Federal Register on November 18, 2016.

Division 2, Subdivision I (Personal Protective Equipment)

1910.139 Reserved. This is a new rule number which Oregon OSHA adopted in accordance with the new federal 1910.139 language as published by federal OSHA in the Federal Register on November 18, 2016. There is no rule language associated with this rule number as it is reserved for future consideration.

1910.140 Personal Fall Protection Systems. This is a new rule which Oregon OSHA adopted fully in accordance with the new federal 1910.140 language as published by federal OSHA in the Federal Register on November 18, 2016. This rule establishes minimum requirements for personal fall protection systems such as personal fall arrest, travel restraint and positioning systems for general industry work covered by Division 2. Currently, Oregon OSHA guides employers to the fall protection system criteria in the construction industry code, Division 3/M for this information through 437-002-0134(5) Fall Protection as well as other general industry regulations.

Appendix C to Subpart I of Part 1910 - Personal Fall Protection Systems Non-mandatory Guidelines. This is a new non-mandatory appendix which Oregon OSHA adopted fully in accordance with the new federal Subpart I of part 1910 language as published by federal OSHA in the Federal Register on November 18, 2016.

Appendix D to Subpart I of Part 1910 - Test Methods and Procedures for Personal Fall Protection Systems Non-mandatory

Guidelines. This is a new non-mandatory appendix which Oregon OSHA adopted fully in accordance with the new federal Subpart I of part 1910 language as published by federal OSHA in the Federal Register on November 18, 2016.

437-002-0134(5) Fall Protection. In the preamble discussion to the final rule as published in the Federal Register on November 18, 2016, federal OSHA established that all general industry walking-working surfaces are covered by the new federal rule 1910.28 Duty to have Fall Protection and Falling Object Protection. The new rule established fifteen unique situations where an employer has a duty to provide fall protection. It also establishes the trigger height for that fall protection, which is generally 4 feet, with exceptions. None of the fifteen situations where employers must provide fall protection include rolling stock or motor vehicles. The preamble discussion specifically states that motor and rolling stock vehicles were not included in the overall "Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems)" final rule and that rolling stock and motor vehicles may be considered in future federal rule making. For these reasons, Oregon OSHA amended the current 437-002-0134(5) Fall Protection within Division 2/I to require fall protection when employees are at a height of more than 10 feet on motor and rolling stock vehicles. This rule goes beyond federal OSHA's regulations and maintains the same Oregon initiated rule for these vehicles as has been in place since 2011. Furthermore, the rule's mandate that fall protection systems must be provided, installed, and used in accordance with the criteria in 1926.502(d), and 437-003-0502 in Division 3/M, Construction/Fall Protection has been revised to guide employers to the applicable new general industry requirements in proposed 2/I, 1910.140. Finally, Oregon OSHA added language for anchorages used for the attachment of travel restraint systems. The final rule makes travel restraint anchorages used for general industry applications consistent with the existing travel restraint (personal fall restraint) anchorage requirements in the Construction standard in Division 3/M.

Division 2, Subdivision L (Fire Protection)

437-002-0182 Oregon Rules for Fire Fighters. This rule has been in place in its current form in Oregon since 2015. Oregon OSHA amended this rule to bring the walking-working surfaces in hose drying towers and drill towers into harmony with the final changes as published by federal OSHA in the Federal Register on November 18, 2016.

Division 2, Subdivision N (Material Handling and Storage)

1910.178 Powered Industrial Trucks. This rule has been in place in its current form in Oregon since 2007. Oregon OSHA amended this rule to bring the walking-working surface portions into harmony with the final changes as published by federal OSHA in the Federal Register on November 18, 2016.

1910.179 Overhead and Gantry Cranes. This rule has been in place in its current form in Oregon since 2007. Oregon OSHA amended this rule to bring the walking-working surface portions into harmony with the final changes as published by federal OSHA in the Federal Register on November 18, 2016.

Division 2, Subdivision R (Special Industries)

1910.262 Textiles. This rule has been in place in its current form in Oregon since 1999. Oregon OSHA amended this rule to bring the walking-working surface portions into harmony with the final changes as published by federal OSHA in the Federal Register on November 18, 2016.

1910.265 Sawmills. This rule has been in place in its current form in Oregon since 2012. Oregon OSHA amended this rule to bring the walking-working surface portions into harmony with the final changes as published by federal OSHA in the Federal Register on November 18, 2016.

437-002-0310 Tree and Shrub Services. This rule has been in place in its current form in Oregon since 2001. Oregon OSHA is proposing to amend the climbing work procedure portion of the existing rule to bring the walking-working surface portions and fall protec-

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tion portions into harmony with the final changes as published by federal OSHA in the Federal Register on November 18, 2016.

437-002-0312 Pulp, Paper and Paperboard Mills. This rule has been in place in its current form in Oregon since 2013. Oregon OSHA amended this rule to bring the walking-working surface portions and fall protection portions into harmony with the final changes as published by federal OSHA in the Federal Register on November 18, 2016.

Division 2, Subdivision RR (Electrical Power Generation, Transmission and Distribution)

437-002-2306 Personal Protective Equipment. This rule has been in place in its current form in Oregon since 2016. Oregon OSHA amended this rule to bring the fall protection portions into harmony with the final changes as published by federal OSHA in the Federal Register on November 18, 2016.

437-002-2307 Portable Ladders and Platforms. This rule has been in place in its current form in Oregon since 2016. Oregon OSHA amended this rule to bring the portable ladder portions into harmony with the final changes as published by federal OSHA in the Federal Register on November 18, 2016.

Rules Coordinator: Sue C. Joye—(503) 947-7449

437-002-0005

Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, 29 CFR 1910, in the Federal Register:

(1) 29 CFR 1910.1, Purpose and scope; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23503.

(2) 29 CFR 1910.2, Definitions; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23503.

(3) 29 CFR 1910.3, Petitions for the issuance, amendment, or repeal of a standard; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23503.

(4) 29 CFR 1910.4, Amendments to this part; published 6/27/74, Federal Register, vol. 39, no. 125, p. 23503.

(5) 29 CFR 1910.5, Applicability of standards; published 6/30/93, FR vol. 58, no. 124, p. 35308.

(6) 29 CFR 1910.6, Incorporation by reference; published 11/18/16, FR vol. 81, no. 223, p. 82494.

(7) 29 CFR 1910.7, Definition and requirements for a Nationally Recognized Testing Laboratory; published 5/11/88, FR vol. 53, no. 91, p. 16838.

(8) 29 CFR 1910.9, Compliance duties owed to each employee; published 12/12/08, Federal Register, vol. 73, no. 240, pp. 75568-75589.

These standards are on file at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the United States Government Printing Office.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stat. Implemented: ORS 654.001 - 654.295

Hist.: APD 17-1988, f. & cert. ef. 11-10-88; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 8-1999, f. & cert. ef. 8-6-99; OSHA 4-2005, f. & cert. ef. 12-14-05; OSHA 4-2007, f. & cert. ef. 8-15-07; OSHA 7-2008, f. & cert. ef. 5-30-08; OSHA 5-2009, f. & cert. ef. 5-29-09; OSHA 1-2010, f. & cert. ef. 2-19-10; OSHA 2-2010, f. & cert. ef. 2-25-10; OSHA 4-2011, f. & cert. ef. 12-8-11; OSHA 5-2012, f. & cert. ef. 9-25-12; OSHA 7-2012, f. & cert. ef. 12-14-12; OSHA 7-2013, f. & cert. ef. 12-12-13; OSHA 3-2016, f. & cert. ef. 8-19-16; OSHA 4-2016, f. & cert. ef. 9-7-16; OSHA 2-2017, f. 5-16-17, cert. ef. 11-1-17

437-002-0020

Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, 29 CFR 1910, in the Federal Register:

(1) 29 CFR 1910.21 Scope and definitions, published 11/18/16, Federal Register, vol. 81, no. 223, p. 82494.

(2) 29 CFR 1910.22 General Requirements, published 11/18/16, Federal Register, vol. 81, no. 223, p. 82494.

(3) 29 CFR 1910.23 Ladders, published 11/18/16, Federal Register, vol. 81, no. 223, p. 82494.

(4) 29 CFR 1910.24 Step bolts and manhole steps, published 11/18/16, Federal Register, vol. 81, no. 223, p. 82494.

(5) 29 CFR 1910.25 published 11/18/16, Federal Register, vol. 81, no. 223, p. 82494.

(6) 29 CFR 1910.26 Dockboards, published 11/18/16, Federal Register, vol. 81, no. 223, p. 82494.

(7) 29 CFR 1910.27 Scaffolds and rope descent systems, published 11/18/16, Federal Register, vol. 81, no. 223, p. 82494.

(8) 29 CFR 1910.28 Duty to have fall protection and falling object protection, published 11/18/16, Federal Register, vol. 81, no. 223, p. 82494.

(9) 29 CFR 1910.29 Fall protection systems and falling object protection – criteria and practices, published 11/18/16, Federal Register, vol. 81, no. 223, p. 82494.

(10) 29 CFR 1910.30 Training requirements, published 11/18/16, Federal Register, vol. 81, no. 223, p. 82494.

These standards are available at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the United States Government Printing Office.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: APD 4-1990, f. & cert. ef. 1-23-90; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 10-1999, f. & cert. ef. 9-10-99; OSHA 2-2013, f. 2-15-13, cert. ef. 4-1-13; OSHA 2-2017, f. 5-16-17, cert. ef. 11-1-17

437-002-0022

Additional Oregon General Requirements

(1) Scope and application. This rule applies in addition to those in Division 2/D Walking-Working Surfaces.

(2) Barriers. The employer must ensure:

(a) Protective barriers or suitable guards are erected when covers over openings are removed or excavations made in places accessible to vehicular or pedestrian traffic. Warning lights or flares shall be displayed if work is being done at night. These protective measures shall be maintained until permanent or adequate covers or barricades are in place or the hazard removed.

(b) A watchperson is stationed where temporary conditions do not permit safeguarding of employees through the use of warning signs, lights, protective barriers, or covers.

(3) Plant Arrangement. The employer must ensure:

(a) Provisions for safety (such as adequate work and storage space for the full needs of raw, in-process, and finished materials, and for machinery, equipment and operations) are included in plant design, layout, and operation.

(b) A vertical clearance of not less than 6 1/2 feet is provided over work areas. Where it is otherwise impractical to secure adequate head room, overhead obstructions may be padded or may be indicated by means of contrasting paint, telltales, or similar means, if such means will furnish adequate protection.

(c) Work platforms provided shall be of sufficient width to provide a safe working space.

(4) Aisles, Passageways, Walkways, Inclines. The employer must ensure:

(a) Aisles, passageways, and walkways are of adequate width for their intended or actual use, and in no event shall they be less than 22 inches wide.

(b) Fixed inclined walkways are not less than 22 inches wide, inclined at no greater angle than 24 degrees, and are securely fastened at the top and bottom.

(c) Moveable inclined walkways which extend to floats or floating equipment (except to vessels under Federal jurisdiction) are not less than 20 inches wide, and are secured at the upper end only with clear space provided for the lower end to adjust automatically with the heights of water.

(d) An adequate antislip surface is applied to inclined walkways whenever the gradient so warrants. Adequate cleats secured at uniform intervals not to exceed 18 inches, and extending the full width of the walkway when practical, may be used for this purpose.

(e) Inclines extending from floor to floor which are used instead of stairways have standard railings in accordance with the requirements in 1910.29(b).

(f) In addition to the surface conditions in 1910.22(a)(3), aisles, passageways, walkways, and inclines are maintained free of holes, unevenness, or any unnecessary obstructions or debris that may create a hazard.

Stat. Auth.: ORS 654.025(2) & 656.726(3)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1990, f. & cert. ef. 1-23-90; OSHA 6-1994, f. & cert. ef. 9-30-94; OSHA 2-2017, f. 5-16-17, cert. ef. 11-1-17

437-002-0026

Portable Ladders

(1) Scope and application. This rule applies to the use of portable ladders, including job-made ladders, in addition to the rules in 1910.23 Ladders.

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(2) Definitions. These definitions apply to portable ladder terms in this rule. Additional terms in 1910.21(b) apply to portable ladders within 1910.23 and this rule.

(a) Job-made ladder. A non-commercially manufactured portable ladder constructed on the worksite for temporary use.

(b) Non-self-supporting ladder. A class of portable ladders that, by design, must be placed against a structure independent of itself, such as a wall, to remain standing for use. Single ladders, extension ladders, sectional ladders, and articulating ladders set up in a straight ladder mode are examples of non-self-supporting ladders.

(c) Self-supporting ladder. A class of portable ladders that, by design, stand on their own when erected for use without assistance from external structures. Stepladders, double front ladders, platform ladders, trestle ladders, and articulating ladders set up in a stepladder mode are examples of self-supporting ladders.

(3) Ladder selection. The employer must ensure:

(a) Wood ladders comply with American National Standard ANSI/ASC A14.1-2007.

(b) Portable metal ladders comply with American National Standard ANSI/ASC A14.2-2007.

(c) Portable reinforced plastic (fiberglass) ladders comply with American National Standard ANSI/ASC A14.5-2007.

NOTE to 437-002-0026(3): Unaltered and properly maintained ladders that meet the ANSI standard in effect at the time of their manufacture comply with this standard. This includes job-made ladders designed and built according to American National Standard A14.4-1979 and portable ladders that comply with newer versions of the particular ANSI standard.

(4) Use – all portable ladders. The employer must ensure:

(a) Each self-supporting ladder or combination ladder used in a self-supporting ladder mode is equipped with a metal spreader or locking device that securely holds the front and back sections in a fully open position while the ladder is in use.

(b) Each non-self-supporting ladder is erected to the angle represented in Figure D-1 of 1910.23(c)(11) unless otherwise instructed in writing by the ladder manufacturer. Figure D-1

(c) No employee steps, jumps or otherwise moves from one erected ladder to another.

(d) Ladders are not used as planks or bridges between walking-working surfaces or in other horizontal applications.

(e) Ladders are not used to gain additional height from elevated surfaces such as scaffolds, truck beds, vehicle bodies, tractor scoops or boom truck buckets.

(f) Ladders are not used as supports for working platforms or scaffolding planks unless approved for such purposes by the ladder manufacturer.

NOTE to 437-002-0026(4): When working on or near electric circuits or energized lines, comply with 1910.333(c) in Division 2/S.

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

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 654.025(2) & 656.726(3)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 10-1999, f. & cert. ef. 9-10-99; OSHA 2-2017, f. 5-16-17, cert. ef. 11-1-17

437-002-0032

Ramps and Runways

(1) Scope and application. This rule applies to the safe use of ramps and runways for vehicles in addition to the rules in Division 2/D.

(2) The employer must ensure ramps and runways for vehicles:

(a) Have adequate width and evenness for safe operation of equipment.

(b) Are provided with timber guards of not less than nominal 6-inch by 6-inch material set on nominal 3-inch blocks, or the equivalent, placed parallel to and secured to the sides of the ramp or runway.

Stat. Auth.: ORS 654.025(2) & 656.726(3)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1990, f. & cert. ef. 1-23-90; OSHA 2-2017, f. 5-16-17, cert. ef. 11-1-17

437-002-0033

Piers and Wharves

(1) Scope and application. This rule applies to piers and wharves in addition to the rules in Division 2/D.

(2) The employer must ensure piers and wharves:

(a) With open sides of piers and wharves, more than 4 feet above the ground or water level, have a shear or guard timber (bull rail) of not less than 6-inch by 6-inch wood material set on nominal 3-inch blocking, or material of equal strength and minimum height securely attached.

(b) Except for areas where vessels' mooring lines are handled, the open sides, more than 4 feet above the ground or water level, not used for loading or unloading purposes, shall be provided with standard guardrails

in accordance with 1910.29(b) in addition to shear timbers in accordance with paragraph (2)(a) of this section.

(c) Ladders or other means of access reaching from low water mark to the dock floor shall be provided for each 400 feet or portion thereof of the water side of all wharves and piers. Where portable ladders are used, a secure method of fastening them shall be provided.

Stat. Auth.: ORS 654.025(2) & 656.726(3)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-1990, f. & cert. ef. 1-23-90; OSHA 2-2017, f. 5-16-17, cert. ef. 11-1-17

437-002-0060

Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, 29 CFR 1910, in the Federal Register:

(1) 29 CFR 1910.66 Powered Platforms for Building Maintenance, published 11/18/16, Federal Register, vol. 81, no. 223, p. 82494.

(2) 29 CFR 1910.67 Vehicle-Mounted Elevating and Rotating Work Platforms, published 11/18/16, Federal Register, vol. 81, no. 223, p. 82494.

(3) 29 CFR 1910.68 Manlifts, published 11/18/16, Federal Register, vol. 81, no. 223, p. 82494.

These standards are on file with the Oregon Occupational Safety and Health Division, Department of Consumer and Business Services, and the United States Government Printing Office.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: APD 4-1990, f. & cert. ef. 1-23-90; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 4-2007, f. & cert. ef. 8-15-07; OSHA 7-2008, f. & cert. ef. 5-30-08; OSHA 1-2015, f. & cert. ef. 1-5-15; OSHA 2-2017, f. 5-16-17, cert. ef. 11-1-17

437-002-0120

Adoption by Reference

In addition to, and not in lieu of, any other health and safety codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, 29 CFR 1910, in the Federal Register:

(1) 29 CFR 1910.132 General requirements. Repealed with Oregon OSHA Admin. Order 4-2011, filed and effective 12/8/11. In Oregon, OAR 437-002-0134 applies.

(2) 29 CFR 1910.133 Eye and face protection. Repealed with Oregon OSHA Admin. Order 4-2011, filed and effective 12/8/11. In Oregon, OAR 437-002-0134 applies.

(3) 29 CFR 1910.134 Respiratory protection, published 8/7/12, FR vol. 77, no. 152, p. 46948.

(4) 29 CFR 1910.135 Occupational head protection. Repealed with Oregon OSHA Admin. Order 4-2011, filed and effective 12/8/11. In Oregon, OAR 437-002-0134 applies.

(5) 29 CFR 1910.136 Occupational foot protection. Repealed with Oregon OSHA Admin. Order 4-2011, filed and effective 12/8/11. In Oregon, OAR 437-002-0134 applies.

(6) 29 CFR 1910.137 Electrical protective equipment, published 4/11/14, FR vol. 79, no. 70, p. 20316.

(7) 29 CFR 1910.138 Hand Protection. Repealed with Oregon OSHA Admin. Order 4-2011, filed and effective 12/8/11. In Oregon, OAR 437-002-0134 applies.

(8) 29 CFR 1910.139 Reserved.

(9) 29 CFR 1910.140 Personal fall protection, published 11/18/16, Federal Register, vol. 81, no. 223, p. 82494.

(10) Appendices.

Appendix A – References for further information (nonmandatory).

Appendix B – Nonmandatory compliance guidelines for hazard assessment and personal protective equipment selection; amended with OR-OSHA Admin. Order 3-2015, f. 10/9/15, ef. 1/1/16.

Appendix C to Subpart I of Part 1910 – Personal Fall Protection Systems Non-Mandatory Guidelines, published 11/18/16, Federal Register, vol. 81, no. 223, p. 82494.

Appendix D to Subpart I of Part 1910 – Test Methods and Procedures for Personal Fall Protection Systems Non-Mandatory Guidelines, published 11/18/16, Federal Register, vol. 81, no. 223, p. 82494.

These standards are available from the Oregon Occupational Safety and Health Division (OR-OSHA), Department of Consumer and Business Services; and the United States Government Printing Office.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 9-1993, f. 7-29-93, cert. ef. 9-15-93; OSHA 3-1994, f. & cert. ef. 8-1-94; OSHA 3-1997, f. & cert. ef. 3-28-97; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 12-2001, f. & cert. ef. 10-26-01; OSHA 1-2004, f. 3-26-04, cert. ef. 7-1-04; OSHA 5-2004, f. & cert. ef. 11-19-04; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 10-2006, f. & cert. ef. 11-30-06; OSHA 5-2008, f. 5-1-08, cert. ef. 5-15-08; OSHA 5-2009, f. & cert. ef. 5-29-09; OSHA 2-2010, f. & cert. ef. 2-25-10; OSHA 4-2011, f. & cert. ef. 12-8-11; OSHA 1-2012, f. & cert. ef. 4-10-12; OSHA 7-2012, f. & cert. ef. 12-14-12; OSHA 3-2015, f. 10-9-15, cert. ef. 1-1-16; OSHA 2-2017, f. 5-16-17, cert. ef. 11-1-17

ADMINISTRATIVE RULES

437-002-0134

Personal Protective Equipment

Application. This rule applies to personal protective equipment and other protective equipment for the eyes, face, head, extremities and torso to include protective clothing, respiratory devices, and protective shields and barriers, wherever employees encounter hazardous processes or environments, chemical hazards, radiological hazards, or mechanical irritants that are capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.

Note: The assessment for eyes, face, head, hands, and feet are currently in effect. The torso and extremities (e.g. arms and legs) element of the body assessment will not be enforced until July 1, 2012.

(1) Hazard assessment and equipment selection.

(a) The employer must assess the workplace to determine if hazards are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE) or other protective equipment. If such hazards are present, or likely to be present, the employer must:

(A) Select, and have each affected employee use, the types of PPE that will protect the affected employee from the hazards identified in the hazard assessment;

(i) All protective equipment must be of safe design and construction for the work to be performed.

(ii) Protective equipment must be worn and used in a manner which will make full use of its protective properties.

(B) Communicate selection decisions to each affected employee; and,

(C) Select PPE that properly fits each affected employee.

NOTE: Non-mandatory Appendix B contains an example of procedures that would comply with the requirement for a hazard assessment.

(b) The employer must verify that the required workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, which identifies the document as a certification of hazard assessment.

(2) Equipment.

(a) Where employees provide their own protective equipment, the employer is responsible to assure its adequacy, including proper maintenance, and sanitation of such equipment.

(b) All personal protective equipment must be provided, used, and maintained in a sanitary and reliable condition.

(c) Defective or damaged personal protective equipment must not be used.

(d) Each employer must maintain a regular system of inspection and maintenance of personal protective equipment furnished to workers.

(3) Training.

(a) The employer must provide training to each employee who is required by this section to use PPE and each employee that is provided training must know at least the following:

(A) When PPE is necessary;

(B) What PPE is necessary;

(C) How to properly don, doff, adjust, and wear PPE;

(D) The limitations of the PPE; and,

(E) The proper care, maintenance, useful life and disposal of the PPE.

(b) Each affected employee must demonstrate an understanding of the training specified in paragraph (3)(a) of this section, and the ability to use PPE properly, before being allowed to perform work requiring the use of PPE.

(c) When the employer has reason to believe that any affected employee who has already been trained does not have the understanding and skill required by paragraph (3)(b) of this section, the employer must retrain each such employee. Circumstances where retraining is required include, but are not limited to situations where:

(A) Changes in the workplace render previous training obsolete; or

(B) Changes in the types of PPE to be used render previous training obsolete; or

(C) Inadequacies in an affected employee's knowledge or use of assigned PPE indicate that the employee has not retained the requisite understanding or skill.

(4) Payment for protective equipment.

(a) Except as provided by paragraphs (4)(b) through (4)(f) of this section, the protective equipment, including personal protective equipment (PPE), used to comply with this part, must be provided by the employer at no cost to employees.

(b) The employer is not required to pay for non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) and non-specialty prescription safety eyewear, provided that the employer permits such items to be worn off the job-site.

(c) When the employer provides metatarsal guards and allows the employee, at his or her request, to use shoes or boots with built-in metatarsal protection, the employer is not required to reimburse the employee for the shoes or boots.

(d) The employer is not required to pay for:

(A) The logging boots required by OAR 437-007-0330 in Division 7.

(B) Everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots; or

(C) Ordinary clothing, skin creams, or other items, used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses, and sunscreen.

(e) The employer must pay for replacement PPE, except when the employee has lost or intentionally damaged the PPE.

(f) Where an employee provides adequate protective equipment he or she owns pursuant to paragraph (2)(a) of this section, the employer may allow the employee to use it and is not required to reimburse the employee for that equipment. The employer must not require an employee to provide or pay for his or her own PPE, unless the PPE is excepted by paragraphs (4)(b) through (4)(e) of this section.

(5) Fall Protection.

(a) Motor and Rolling Stock Vehicles.

(A) All employees must be protected from fall hazards when working on motor and rolling stock vehicle surfaces more than 10 feet above a lower level or at any height above dangerous equipment.

(B) The employer must ensure that fall protection systems are provided, installed, and used according to the criteria in 1910.140 in this Subdivision.

NOTE to 437-002-0134(5)(a): The duty to provide fall protection for employees on walking-working surfaces other than motor and rolling stock vehicles is covered by 1910.28 (Duty to have fall protection and falling object protection) within 2/D. The criteria and practices for fall protection systems for walking-working surfaces other than motor and rolling stock vehicles is covered by 1910.29 within 2/D.

(b) Travel Restraint Systems. The employer must ensure each employee using a travel restraint system (personal fall restraint) is prevented from going over the edge by providing, installing and ensuring its use according to the criteria in 1910.140 in this Subdivision with the following exceptions to 1910.140:

(A) 1910.140(c)(13) does not apply when anchorages used solely for travel restraint are:

(i) Capable of supporting 3000 pounds (13.34 kN) per employee attached; or

(ii) Are designed, installed and used under the supervision of a qualified person, as part of a complete personal fall protection system that maintains a safety factor of at least two.

(B) 1910.140(c)(22) does not apply. The attachment point to the body belt or full body harness may be at the back, front or side D-ring.

(6) Work Clothing.

(a) Clothing must be worn which is appropriate to the work performed and conditions encountered.

(b) Appropriate high temperature protective clothing must be worn by workers who are exposed to possible contact with molten metals or other substances that can cause burns.

(c) Loose sleeves, ties, lapels, cuffs, or other loose clothing must not be worn near moving machinery.

(d) Clothing saturated or impregnated with flammable liquids, corrosive or toxic substances, irritants, or oxidizing agents must be removed immediately and not worn again until properly cleaned.

(e) Rings, wristwatches, earrings, bracelets, and other jewelry which might contact power driven machinery or electric circuitry, must not be worn.

(7) High Visibility Garments. Employees exposed to hazards caused by on highway type moving vehicles in construction zones and street/highway traffic must wear highly visible upper body garments. The colors must contrast with other colors in the area sufficiently to make the worker stand out. Colors equivalent to strong red, strong orange, strong yellow, strong yellow-green or fluorescent versions of these colors are acceptable. During hours of darkness, the garments must also have reflective material visible from all sides for 1000 feet.

(8) Eye And Face Protection.

(a) The employer must ensure that each affected employee uses appropriate eye or face protection when exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, acids or caustic liquids, chemical gases or vapors, or potentially injurious light radiation.

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(b) The employer must ensure that each affected employee uses eye protection that provides side protection when there is a hazard from flying objects. Detachable side protectors (e.g., clip-on or slide-on side shields) meeting the pertinent requirements of this section are acceptable.

(c) The employer must ensure that each affected employee who wears prescription lenses while engaged in operations that involve eye hazards wears eye protection that incorporates the prescription in its design, or shall wear eye protection that can be worn over the prescription lenses without disturbing the proper position of the prescription lenses or the protective lenses.

(d) Eye and face PPE must be distinctly marked to facilitate identification of the manufacturer.

(e) The employer must ensure that each affected employee uses equipment with filter lenses that have a shade number appropriate for the work being performed for protection from injurious light radiation. The following is a listing of appropriate shade numbers for various operations.

(f) Protective eye and face protection devices must comply with any of the following consensus standards

(A) ANSI/ISEA Z87.1-2010, Occupational and Educational Personal Eye and Face Protection Devices, incorporated by reference in 1910.6;

(B)ANSI Z87.1-2003, American National Standard Practice for Occupational and Educational Eye and Face Protection, which is incorporated by reference in 1910.6; or

(C) ANSI Z87.1-1989 (R-1998), American National Standard Practice for Occupational and Educational Eye and Face Protection, which is incorporated by reference in 1910.6.

(g) Protective eye and face protection devices that the employer demonstrates are at least as effective as protective eye and face protection devices that are constructed in accordance with one of the above consensus standards will be deemed to be in compliance with the requirements of this section.

(h) Employees whose occupation or assignment requires exposure to laser beams shall be furnished laser safety goggles as required by Occupational Health Regulations which will protect for the specific wavelength of the laser and be of optical density adequate for the energy involved.

(9) Head Protection.

(a) The employer must ensure that each affected employee wears a protective helmet when working in areas where there is a potential for injury to the head from falling or flying objects.

(b) The employer must ensure that a protective helmet designed to reduce electrical shock hazard is worn by each such affected employee when near exposed electrical conductors which could contact the head.

(c) Head protection must comply with any of the following consensus standards:

(A) ANSI Z89.1-2009, American National Standard for Industrial Head Protection, which is incorporated by reference in §1910.6;

(B) ANSI Z89.1-2003, American National Standard for Industrial Head Protection, which is incorporated by reference in 1910.6; or

(C) ANSI Z89.1-1997, American National Standard for Industrial Head Protection, which is incorporated by reference in 1910.6.

(d) Head protection devices that the employer demonstrates are at least as effective as head protection devices that are constructed in accordance with one of the above consensus standards will be deemed to be in compliance with the requirements of this section.

(e) Employees who are exposed to power-driven machinery or to sources of ignition shall wear caps or other head covering which completely covers the hair.

(10) Foot Protection.

(a) The employer must ensure that each affected employee use protective footwear when working in areas where there is a danger of foot injuries due to falling or rolling objects, or objects piercing the sole, and where such employee's feet are exposed to electrical hazards, such as static-discharge or electric-shock hazard, that remains after the employer takes other necessary protective measures.

(b) Protective footwear must comply with any of the following consensus standards:

(A) ASTM F-2412-2005, Standard Test Methods for Foot Protection, and ASTM F-2413-2005, Standard Specification for Performance Requirements for Protective Footwear, which are incorporated by reference in 1910.6;

(B) ANSI Z41-1999, American National Standard for Personal Protection –Protective Footwear, which is incorporated by reference in 1910.6; or

(C) ANSI Z41-1991, American National Standard for Personal Protection – Protective Footwear, which is incorporated by reference in §1910.6.

(c) Protective footwear that the employer demonstrates is at least as effective as protective footwear that is constructed in accordance with one of the above consensus standards will be deemed to be in compliance with the requirements of this section.

(d) Special types or designs of shoes or foot guards are required where conditions exist that make their use necessary for the safety of workers.

(11) Leg protection

(a) Leggings or high boots of leather, rubber, or other suitable material must be worn by persons exposed to hot substances or dangerous chemical spills.

(b) Employees using chain saws must wear chaps or leg protectors that cover the leg from the upper thigh to mid-calf. The protector must be material designed to resist cuts from the chain saw. Employers must provide this protection at no cost to the employee.

NOTE to 437-002-0134(11)(b): Employees working in the tree and shrub services industry must follow rules on this subject in Subdivision 2/R instead of the above.

(12) Hand Protection.

(a) Employers must select and require employees to use appropriate hand protection when employees' hands are exposed to hazards such as those from skin absorption of harmful substances; severe cuts or lacerations; severe abrasions; punctures; chemical burns; thermal burns; and harmful temperature extremes.

(b) Employers must base the selection of the appropriate hand protection on an evaluation of the performance characteristics of the hand protection relative to the task(s) to be performed, conditions present, duration of use, and the hazards and potential hazards identified.

(c) Gloves must not be worn by persons whose hands are exposed to moving parts in which they could be caught.

(13) Skin protection. Where the need for their use is necessary, protective covering, ointments, gloves, or other effective protection must be provided for and used by persons exposed to materials which are hazardous to the skin.

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

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 4-2011, f. & cert. ef. 12-8-11; OSHA 2-2013, f. 2-15-13, cert. ef. 4-1-13; OSHA 3-2015, f. 10-9-15, cert. ef. 1-1-16; OSHA 3-2016, f. & cert. ef. 8-19-16; OSHA 4-2016, f. & cert. ef. 9-7-16; OSHA 2-2017, f. 5-16-17, cert. ef. 11-1-17

437-002-0182

Oregon Rules for Fire Fighters

(1) Scope and Application. These rules apply to public and private employers who engage in structural fire service activities, including emergency first response.

Note: Employees subject to 437-002-0182 must comply with provisions of other applicable Oregon OSHA safety and health rules.

(2) Exceptions. These rules do not apply to the following firefighting activities:

(a) Private industry fire brigades covered under 1910.156, Division 2/L, Fire Protection.

(b) Forest and uncultivated wildland firefighting covered under Division 7/N, Wildland Fire Suppression and Prescribed Fire.

(c) Marine firefighting and rescue covered under CFR title 33, Navigation and Navigable Waters.

(d) Aircraft firefighting and rescue covered under CFR title 49, Transportation.

Note: Structural fire protection services who engage in activities listed under 437-002-0182(2)(a) through (d), must also comply with the applicable standard for the activity.

(3) Definitions.

(a) Aerial device — An aerial ladder, elevating platform, aerial ladder platform, or water tower that is designed to position personnel, handle materials, provide egress and discharge water.

(b) ANSI — American National Standards Institute.

(c) Apparatus — A mobile piece of firefighting equipment such as pumper, water tender, etc.

(d) Certified — Attested or confirmed in a formal written statement, or someone or something officially recognized as possessing certain qualifications or meeting certain standards.

(e) Confined space — A space that meets all of the following:

(A) Large enough and so configured that an employee can fully enter the space and perform work; and

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(B) Has limited or restricted means for entry or exit (for example, tanks, vessels, silos, storage bins, hoppers, vaults, and pits are spaces that may have limited means of entry); and

(C) Is not designed for continuous occupancy.

(f) Designee — A person who has been officially chosen to do or be something.

(g) DOT — Department of Transportation.

(h) DPSST — Department of Public Safety Standards and Training.

(i) Drill tower — A structure, which may or may not be attached to the station, that is over two stories high and primarily used for non-classroom firefighter training in fire service techniques.

(j) Emergency incident — Any situation where a fire department delivers emergency services, rescue, fire suppression, medical treatment, and other forms of hazard control and mitigation.

(k) Emergency scene — The site where the suppression of a fire or the emergency exists.

(l) Enclosed structure — A structure with a roof or ceiling and at least two walls which may present fire hazards to employees, such as accumulations of smoke, toxic gases and heat, similar to those found in buildings.

(m) Firefighter — A person involved in performing fire department duties and responsibilities, including fire suppression, who may be a career or volunteer member of a fire department and may occupy any position or rank within the fire department.

(n) Fire ground — An emergency scene or location where firefighting or live fire training activities occur.

(o) Fire training — Training received by firefighters to maintain proficiency in performing their assigned duties.

(p) Hazardous material incident — The accidental release of hazardous materials from their containers.

(q) Helmet — An element of the protective ensemble designed to provide minimum protection to the user's head against impact, flying or falling objects, electric shock, penetration, heat, and flame.

(r) Hose tower — A vertical structure where a hose is hung to dry.

(s) IFSTA — International Fire Service Training Association.

(t) IMS — Incident Management System. Also referred to as an Incident Command System (ICS).

(u) Immediately dangerous to life or health (IDLH) — An atmosphere that poses an immediate threat to life, would cause irreversible adverse health effects, or would impair an individual's ability to escape from a dangerous atmosphere.

(v) Incipient stage fire — A fire which is in the initial or beginning stage and which can be controlled or extinguished by portable fire extinguishers, Class II standpipe or small hose systems without the need for protective clothing or breathing apparatus.

(w) Interior structural firefighting — The physical activity of fire suppression, rescue or both, inside of buildings or enclosed structures which are involved in a fire situation beyond the incipient stage.

(x) Live fire training — Any fire set within a structure, tank, pipe, pan, etc., under controlled conditions to facilitate firefighter training under actual fire conditions.

(y) NFPA — National Fire Protection Association.

(z) NIOSH — National Institute of Occupational Safety and Health.

(aa) Private Industry Fire Brigades — A group of employees who are required to fight interior structural fires at their place of employment.

(bb) Protective ensemble — The clothing and personal protective equipment worn to provide limited protection to the user's head, body, and extremities from thermal, physical, chemical, and health hazards. Protective ensemble elements include firefighting coats and trousers, helmets, hoods, gloves, footwear, eye and face protection devices, and respirators.

(cc) Qualified — Certified as being trained to perform a particular job or activity.

(dd) Respirators:

(A) Atmosphere-supplying respirator is a respirator that supplies the user with air from a source independent of the ambient atmosphere and includes supplied-air respirators (SARS) and self-contained breathing apparatus (SCBA) units.

(B) Air-purifying respirator is a respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

(C) Positive pressure demand respirator is a respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

(D) Pressure-demand respirator is a positive pressure atmosphere-supplying respirator that admits air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

(E) Self-Contained Breathing Apparatus SCBA is a self-contained breathing apparatus designed to provide the wearer with a supply of respirable air carried in and generated by the breathing apparatus. This apparatus requires no intake of oxygen from the outside atmosphere and can be designed to be a demand or pressure-demand type respirator.

(F) Supplied-air respirator (SAR) or airline respirator is an atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

(ee) Responder — A certified person who has the responsibility to respond to an emergency incident.

(ff) Station (Fire station) — Structure to house the fire service apparatus and personnel.

(gg) Tailboard — Standing space at rear of a fire apparatus where firefighters stand to access and reload hose and/or equipment.

(hh) Training — Instruction with hands-on practice in the operation of equipment, including respiratory protection equipment, that is expected to be used and in the performance of assigned duties.

(ii) Warning light — A flashing or rotating light.

(4) Organizational statement.

(a) The employer must develop and implement a written statement or policy that includes basic organizational structure, basic functions of the organization, and type, amount, and frequency of training to be provided.

(b) This statement must be made available for inspection by Oregon OSHA and by fire department employees or their designated representatives.

(5) Personnel.

(a) The employer must review and evaluate the physical capability of each firefighter annually to determine their ability to perform duties that may be assigned. The review and evaluation will be accomplished through physical examination, stress testing, or satisfactory performance demonstrated during the performance of their assigned duties.

(b) The employer must not permit a firefighter with a known medical condition that would significantly impair their ability to engage in fire suppression activities at the emergency scene unless a physician's certificate of the firefighter's fitness to participate in such activities is provided to the employer. This will not limit the employer's ability to assign firefighters to support activities (versus fire suppression activities).

(6) Employer's Responsibility.

(a) Each employer must comply with the provisions of this Division to protect the life, safety, and health of employees.

(b) It is the responsibility of the employer to establish and supervise:

(A) A safe and healthful working environment, as it applies to non-emergency conditions or to emergency conditions at the scene after the incident has been terminated, as determined by the officer in charge.

(B) Programs for training employees in the fundamentals of accident prevention.

(C) A safe and healthful working environment as it applies to live fire training exercises.

(c) The employer must maintain all equipment in a safe condition.

(d) The employer must ensure that firefighters who participate in exempted firefighting activities listed under 437-002-0182(2) are properly trained, protected, clothed, and equipped for the known hazards of that particular emergency operation.

(7) Employee's Responsibility.

(a) Each firefighter must comply with the requirements of 437-002-0182 that are applicable to their own actions and conduct in the course of their employment.

(b) Firefighters must notify the appropriate employer or safety committee representative of unsafe practices, equipment, or workplace conditions.

(c) All firefighters, at regularly scheduled times, must attend required training and orientation programs designed to increase their competency in occupational safety and health.

(d) Firefighters and other employees must apply the principles of accident prevention in their work. They must use all required safety devices and protective equipment.

(e) Each firefighter must take proper care of their protective equipment.

(f) Firefighters who are expected to perform firefighting operations must notify their employer when health conditions arise that will limit their capability of performing those duties.

(8) Safety Committee.

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(a) Fire departments must have a separate safety committee or hold safety meetings according to the requirements of Division 1, 437-001-0765, Safety Committees and Safety Meetings.

(b) When applicable, the representation on the safety committee must include both career and volunteer firefighters.

(9) Incident Management.

(a) The employer must develop and implement written procedures for incident management that meets the requirement of NFPA 1561 (2008): Standard on Emergency Services Incident Management System.

(b) These procedures must apply to all employees involved in emergency operations.

(c) Each employee involved in emergency operations must be familiar with these procedures.

(10) Accountability. The employer must develop and implement written procedures for a personnel accountability system that meets the requirement of NFPA 1561 (2008): Standard on Emergency Services Incident Management System.

(11) Firefighting Education and Training.

(a) The employer must develop and implement a policy for appropriately educating and training all department firefighting classifications (ranks) before they perform assigned duties.

(b) Firefighters who participate in interior structural firefighting activities must be trained according to NFPA 1001 (2013): Standard for Fire Fighter Professional Qualifications (Fire Fighter I), or they must meet the training levels required under 437-002-0182(11)(c) and be under the direct supervision of a firefighter trained to NFPA Fire Fighter I or higher.

Note: Department of Public Safety Standards and Training (DPSST) certification for NFPA Fire Fighter I or higher satisfies the training requirement in 437-002-0182(11)(b) but is not required by these rules.

(c) Firefighters who participate in live fire training in a structure, or only in structural firefighting activities not covered under 437-002-0182(11)(b), must be trained to meet the minimum job performance requirements for NFPA Fire Fighter I as prescribed by NFPA 1403 (2012): Standard on Live Fire Training Evolutions (Student Prerequisites).

(d) All live fire training must be conducted following the requirements of NFPA 1403 (2012): Standard on Live Fire Training Evolutions, or Appendix A (Mandatory), Minimum Requirements for Live Fire Training, of this standard.

(e) Live fire training must be conducted under the direction of the fire department's training officer or employer authorized representative.

(12) General Requirements for Protective Ensembles.

(a) Protective ensembles must protect the user's head, body, and extremities. Protective ensembles consist of the following elements: body protection; head protection; hand protection; foot and leg protection; eye and face protection; and respiratory protection.

Note: Employees must be protected from noise that exceeds the levels in Division 2/G, 1910.95, Occupational Noise Exposure.

(b) The employer must provide employees all protective ensemble elements at no cost to employees. The employer must not allow employee-owned protective ensemble elements that do not comply with the requirements under 437-002-0182(13) through (18) to be used for structural firefighting. See Appendix B (Non-mandatory), General Information and Recommendations, of this standard.

(c) Employees must wear all appropriate protective ensemble elements that meet the requirements under 437-002-0182(13) through (18) when engaged in interior structural firefighting.

(d) In situations other than interior structural firefighting, employees must wear the appropriate protective ensemble elements for the known hazards of that particular emergency operation.

(13) Body Protection. All structural firefighting coats and trousers must be at least equivalent to the requirements of NFPA 1971 (1991): Standard on Protective Clothing for Structural Fire Fighting. Structural firefighting coats and trousers purchased on or after July 1, 2016, must be at least equivalent to the requirements of NFPA 1971 (2013): Standard on Protective Ensemble for Structural Fire Fighting.

(14) Head Protection.

(a) All structural firefighting helmets must be at least equivalent to the requirements of NFPA 1971 (2000): Standard on Protective Ensemble for Structural Fire Fighting. Structural firefighting helmets purchased on or after July 1, 2016, must be at least equivalent to the requirements of NFPA 1971 (2013): Standard on Protective Ensemble for Structural Fire Fighting.

(b) Structural firefighting helmets must consist of a rigid shell; an energy absorbing system; a retention system; fluorescent and retroreflective trim; ear covers; and either a faceshield or goggles, or both.

(c) Use, care, alterations, and maintenance instructions for protective headgear must be supplied for each helmet.

(d) Care, maintenance, and alteration of helmets must conform to the manufacturer's recommendations.

(e) During structural firefighting, helmet accessories designed to provide or maintain protection from health and safety hazards must be worn in the manufacturer's recommended position. See Appendix B (Non-mandatory), General Information and Recommendations, of this standard.

(f) All flame-resistant protective hoods must be at least equivalent to the requirements of NFPA 1971 (1997): Standard on Protective Ensembles for Structural Fire Fighting. Flame-resistant protective hoods purchased on or after July 1, 2016, must be at least equivalent to the requirements of NFPA 1971 (2013): Standard on Protective Ensemble for Structural Fire Fighting.

(g) A flame-resistant protective hood that will not adversely affect the seal of a respirator facepiece must be worn during interior structural firefighting operations to protect the sides of the face and hair.

(15) Hand Protection.

(a) All structural firefighting hand protection must be at least equivalent to the requirements of NFPA 1973 (1988): Standard on Gloves for Structural Fire Fighting. Structural firefighting hand protection purchased on or after July 1, 2016, must be at least equivalent to the requirements of NFPA 1971 (2013): Standard on Protective Ensemble for Structural Fire Fighting.

(b) Hand protection for structural firefighting activities must consist of protective gloves or glove system that will provide protection against cut, puncture, and heat penetration.

(16) Foot and Leg Protection.

(a) All structural firefighting protective footwear must be at least equivalent to the requirements of NFPA 1971 (1997): Standard on Protective Ensembles for Structural Fire Fighting. Structural firefighting protective footwear purchased on or after July 1, 2016, must be at least equivalent to the requirements of NFPA 1971 (2013): Standard on Protective Ensembles for Structural Fire Fighting.

(b) Resoled firefighting footwear must comply with the applicable NFPA standard under 437-002-0182(16)(a).

Note: Employees using chain saws for non-firefighting activities must wear chaps or leg protectors in accordance with Division 2/I, 437-002-0134, Personal Protective Equipment.

(17) Eye and Face Protection.

(a) Face protection must be used where there is a reasonable probability of injury that can be prevented by such protection. When face protection does not protect the eyes from foreign objects, additional protection for the eyes must be used.

(b) The employer must make available eye and face protection devices suitable for the work performed, and employees must use such protection devices as required by 437-002-0182(17)(a).

(c) Protection devices that can be worn over corrective lenses must be available for employees who need them.

(d) Eye and face protection devices worn by firefighters at the fire ground must comply with the following minimum requirements:

(A) They must comply with any of the following consensus standards:

(i) ANSI/ISEA Z87.1-2010, Occupational and Educational Personal Eye and Face Protection Devices;

(ii) ANSI Z87.1-2003, American National Standard Practice for Occupational and Educational Eye and Face Protection; or

(iii) ANSI Z87.1-1989 (R-1998), American National Standard Practice for Occupational and Educational Eye and Face Protection.

(B) They must be reasonably comfortable when worn under the designated conditions.

(C) They must be durable.

(D) They must be capable of being disinfected.

(E) They must be easy to clean.

(e) Faceshields, when used, must be an integral part of the firefighting helmet and may be installed in a fixed position or hinged allowing adjustment of the shields. Face shields must accommodate any of the following styles:

(A) Clear transparent

(B) Colored transparent

(f) Goggles, when used, must consist of a fully flexible frame, a lens holder or a rigid frame with integral lens or lenses, and a separate cushioned fitting surface on the full periphery of the facial contact area.

(A) Materials used for goggles must be chemical-resistant, nontoxic, nonirritating and slow-burning.

(B) There must be support on the face, such as an adjustable headband of suitable material or other appropriate support to hold the frame comfortably and snugly in front of the eyes.

Note: When NIOSH approved full face respiratory equipment is being used by firefighters, additional eye and face protection is not required.

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(18) Respiratory Protection. The employer must develop and implement a respiratory protection program in accordance with Division 2/I, 1910.134, Respiratory Protection. The following note refers to the Respiratory Protection Standards, 1910.134(g)(3) Procedures for IDLH atmospheres and 1910.134(g)(4) Procedures for interior structural fire-fighting, (“two-in/two-out rule”).

NOTE: If, upon arriving at the emergency scene, firefighters find an imminent life threatening situation where immediate action may prevent the loss of life or serious injury, the requirements for firefighters in the outside standby mode may be suspended, when notification is given by radio to incoming responders that they must provide necessary support and backup upon their arrival.

(19) Criteria for Approved Self-Contained Breathing Apparatus (SCBA).

(a) All compressed air cylinders used with approved SCBAs must meet DOT and NIOSH criteria.

(b) In emergency and lifesaving situations, approved SCBAs may be used with approved cylinders from other approved SCBAs provided that such cylinders are of the same capacity and pressure rating. Once the emergency is over, return SCBAs to their original approved condition.

(c) Approved SCBAs must be provided with at least one indicator that automatically sounds an alarm when the remaining air supply of the SCBA is reduced to within a range of 25 percent of its rated service time.

(20) Personal Alert Safety System (PASS).

(a) Each member involved in rescue, fire suppression, or other hazardous duties, must be provided with and must use a PASS device in the hazardous area when self-contained breathing apparatus is in use.

(b) All PASS devices must be at least equivalent to the requirements of NFPA 1982 (1983): Standard on Personal Alert Safety Systems (PASS). PASS devices purchased on or after July 1, 2016 must be at least equivalent to the requirements of NFPA 1982 (2013): Standard on Personal Alert Safety Systems (PASS).

(c) Each PASS device must be tested at least monthly and must be maintained according to the manufacturer’s instructions.

(21) Breathing Air Compressors and Cylinders.

(a) In addition to the requirements contained in Division 2/I, 1910.134(i), breathing air quality and use, air samples must be taken every six months from the compressor and analyzed by the employer or an independent laboratory for Grade D breathing air.

(b) Air samples must also be taken and analyzed when the system is installed or repaired.

(c) Analysis required by 437-002-0182(21)(a) and (b) must be conducted according to ANSI/CGA Standard G7.1 (2011): Commodity Specification for Air.

(22) Hazardous Material Response Plan.

(a) Fire departments that expect or plan to respond to hazardous material incidents must develop and implement a written response plan, and comply with additional requirements of Division 2/H, 1910.120(q), Emergency response to hazardous substance releases.

(b) The written response plan must contain the policies and procedures for:

- (A) Pre-emergency planning and coordination with outside parties,
- (B) Personnel roles, lines of authority, training, and communication,
- (C) Emergency recognition and prevention,
- (D) Safe distances,
- (E) Scene security and control,
- (F) Evacuation procedures,
- (G) Decontamination,
- (H) Emergency medical treatment and first aid,
- (I) Personnel withdrawal procedures,
- (J) Critique of response and follow-up, and
- (K) Personal protective equipment and emergency equipment and response procedures.

(c) The incident commander must be responsible for:

- (A) Identifying of the hazardous substance and condition,
- (B) Implementing emergency operations,
- (C) Ensuring personal protective equipment is worn,
- (D) Limiting access of hot zone to those with a specific mission assignment,

(E) Implementing decontamination procedures,
(F) Designating a safety officer,
(G) Using appropriately trained personnel, and
(H) Providing on-scene medical surveillance for emergency responders.

(23) Fire Apparatus Area.

(a) Walkways around apparatus must be kept free of obstructions.

(b) The station’s apparatus floors must be kept free of grease, oil, and tripping hazards.

(c) Exhaust gases from apparatus within buildings must be maintained within the limits of Division 2/Z, 437-002-0382, Oregon Air Contaminant Rules. See Appendix B (Non-mandatory), General Information and Recommendations, of this standard.

(24) Fire Apparatus Design and Construction.

(a) Employers who have acquired used fire apparatus or used military equipment prior to July 1, 1985 are not required to bring them under a more stringent code than the one in force at the time the apparatus was manufactured. The exceptions to 437-002-0182(24)(a) are:

(A) Restraint systems as required by 437-002-0182(25)(e); and

(B) Roll-over protective structures (ROPS) on all open top off-road vehicles as required by 437-002-0182(24)(f).

(b) There must be steps, ladders or railing to allow safe access to and exit from areas on vehicles that employees access.

(c) Vehicle tailboards must not project outboard of the vehicle sides or fenders and must be designed to provide safe footing.

(d) Exhaust systems must be installed and properly maintained, and must be designed to minimize the exposure of exhaust gases by employees.

(e) The loaded gross weight and empty height of the vehicle must be posted in the vehicle such that it can be clearly read by the driver.

(f) Roll-over protective structures (ROPS) must be provided, installed and maintained on all open top off-road vehicles.

(g) Vehicles with an obstructed view to the rear of the vehicle when backing must be equipped or provided with:

(A) An automatic back-up alarm that must sound when backing and can be heard over the surrounding noise;

(B) A video camera that provides the driver a full and clear view of the path of travel behind the vehicle; or

(C) A spotter who stands to the rear of the vehicle, is visible to the driver in the driver-side mirror and uses unassisted voice communication, portable radio communication or hand signal communication to guide the driver while backing.

(25) Fire Apparatus Operation.

(a) Employees must be trained in the safe operation of each type of vehicle they are authorized to drive.

(b) The employer must not allow an employee to drive a vehicle on a public highway or road unless they have a valid driver’s license.

(c) Any item found that may affect the safe operation of a vehicle must be reported immediately to the officer in charge or other appropriate person.

(d) Employees must not drive or ride in any vehicle known to be unsafe.

(e) Employees being transported by fire department vehicles must ride in designated seat-belted or safety-harnessed positions.

(f) The employer must not allow employees to ride on tailboards, tail steps or running boards.

(g) Vehicles must come to a full stop before employees disembark.

(h) All equipment on a vehicle must be adequately secured when the vehicle is in motion.

(i) When traffic flow is inhibited, vehicles equipped with emergency warning lights must be used to control traffic at emergency scenes. The use of traffic cones, fire department personnel, police, or other traffic control measures must be used as soon as practical.

(26) Fire Apparatus Maintenance and Repair. Each employer must establish written records and procedures whereby apparatus has:

(a) At a minimum, a scheduled monthly maintenance check; or

(b) A maintenance check each time the apparatus is returned to the station following an emergency response, drill, or test drive.

(27) Tires.

(a) No motor vehicle must be operated on any tire that:

(A) Has body ply or belt material exposed through the tread or sidewall;

(B) Has any tread or sidewall separation;

(C) Is flat or has an audible leak; or

(D) Has a cut to the extent that the ply or belt material is exposed.

(b) Any tire on the front wheels of a bus, truck, or truck tractor must have a tread groove pattern depth of at least 4/32 of an inch when measured at any point on a major tread groove. The measurements must not be made where tie bars, humps, or fillets are located.

(c) Except as provided in 437-002-0182(27)(b), tires must have a tread groove pattern depth of at least 2/32 of an inch when measured in a major tread groove. The measurement must not be made where tie bars, humps or fillets are located.

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(28) Aerial Devices.

(a) Aerial devices used for firefighting must be annually inspected and tested by a person qualified in performing such inspections and tests according to NFPA 1911 (2007): Standard for the Inspection, Maintenance, Testing, and Retirement of In-service Automotive Fire Apparatus.

(b) Where structural defects are found in critical components of an aerial device, the repairs must be tested and certified according to NFPA 1911 (2007): Standard for the Inspection, Maintenance, Testing, and Retirement of In-service Automotive Fire Apparatus, by a registered professional engineer, the manufacturer of the apparatus, or an American Welding Society (AWS) Certified Welding Inspector.

(c) A permanent record of tests and repairs under 437-002-0182(28)(b) must be maintained for each aerial device.

(29) Hose Drying Towers.

(a) Floor openings on hose tower platforms must be equipped with a guardrail meeting the requirements of Division 2/D.

Note: The toeboard requirements for elevated work platforms in Division 2/D do not apply to hose drying towers unless hand tools or objects other than hoses are carried onto the platforms.

(b) Fixed ladders must meet the requirements of Division 2/D.

(c) Ropes used to hoist hose in the hose towers must have a working load limit that maintains a minimum safety factor of 3:1.

(30) Drill Towers. Permanent fixed ladders on the outside of drill towers and drill buildings are exempt from offset platform landings and ladder cage guards requirements of Division 2/D.

(31) Testing, Maintenance and Inspection of Fire Service Equipment.

(a) The employer must inspect and maintain fire service equipment at least annually and perform all tests recommended by the manufacturer at the date of manufacture.

(b) When the manufacturer's recommendations required under 437-002-0182(31)(a) are not available from the manufacturer, the employer must identify and follow the recommendations of an applicable consensus standard or curriculum that is nationally recognized and generally accepted by the fire service industry.

Note: Examples of a consensus standard or curriculum under 437-002-0182(31)(b) include, but are not limited to, NFPA standards and IFSTA manuals.

(32) Confined spaces.

(a) Employers must comply with Division 2/J, 437-002-0146, Confined Spaces, for their own confined spaces.

(b) Employers must comply with Division 2/J, 437-002-0146, Confined Spaces, when they agree to serve as a designated rescue service provider.

(c) Employers that will respond to emergency calls for rescue from confined spaces must:

(A) Train responders to recognize inherent confined space hazards before assigning or attempting any related duties in confined space rescues.

(i) Provide responders with understanding, knowledge, and skills necessary for safe performance of confined space rescues.

(ii) Practice a confined space rescue operation at least once every year from a real or simulated confined space.

(B) Responders must be certified in writing to Department of Public Safety Standards and Training (DPSST) Firefighter 1 or equivalent.

(C) Use the Incident Management System (IMS) during confined space rescue incidents that meet the requirements of NFPA 1561 (2008): Standard on Emergency Services Incident Management System.

(D) Assess the situation and determine if it qualifies as a confined space incident.

(i) Classify the operation as a rescue or body recovery.

(ii) Assess and control physical hazards related to the incident or rescue.

(iii) Assess atmospheric hazards.

(I) Use calibrated direct-reading instruments to test the atmosphere in confined spaces for oxygen content, flammable gases and vapors, and toxic air contaminants.

(II) When calibrated direct-reading instruments are not available, the Incident Commander must assume the situation is IDLH and ensure that responders who enter are equipped with appropriate respiratory protective equipment that comply with Division 2/I, 1910.134, Respiratory Protection.

(iv) Determine if the space should be ventilated.

(v) Determine the precautions and procedures to follow for safe entry into the space.

(E) Provide the appropriate rescue, emergency, and personal protective equipment for safe entry into and rescue from confined spaces.

(F) Provide necessary equipment to facilitate non-entry retrieval for responders, unless the retrieval equipment would increase the overall risk or would not contribute to the rescue operations.

Note: For the reader's convenience, the following paragraphs are provided from Division 2/I, 1910.134(g)(3) and (g)(4), Respiratory Protection:

(g)(3) Procedures for IDLH atmospheres. For all IDLH atmospheres, the employer shall ensure that:

(i) One employee or, when needed, more than one employee is located outside the IDLH atmosphere;

(ii) Visual, voice, or signal line communication is maintained between the employee(s) in the IDLH atmosphere and the employee(s) located outside the IDLH atmosphere;

(iii) The employee(s) located outside the IDLH atmosphere are trained and equipped to provide effective emergency rescue;

(iv) The employer or designee is notified before the employee(s) located outside the IDLH atmosphere enter the IDLH atmosphere to provide emergency rescue;

(v) The employer or designee authorized to do so by the employer, once notified, provides necessary assistance appropriate to the situation;

(vi) Employee(s) located outside the IDLH atmospheres are equipped with:

(A) Pressure demand or other positive pressure SCBAs, or a pressure demand or other positive pressure supplied-air respirator with auxiliary SCBA; and either

(B) Appropriate retrieval equipment for removing the employee(s) who enter(s) these hazardous atmospheres where retrieval equipment would contribute to the rescue of the employee(s) and would not increase the overall risk resulting from entry; or

(C) Equivalent means for rescue where retrieval equipment is not required under paragraph (g)(3)(vi)(B).

(g)(4) Procedures for interior structural firefighting. In addition to the requirements set forth under paragraph (g)(3), in interior structural fires, the employer shall ensure that:

(i) At least two employees enter the IDLH atmosphere and remain in visual or voice contact with one another at all times;

(ii) At least two employees are located outside the IDLH atmosphere; and

(iii) All employees engaged in interior structural firefighting use SCBAs.

Note 1 to paragraph (g): One of the two individuals located outside the IDLH atmosphere may be assigned to an additional role, such as incident commander in charge of the emergency or safety officer, so long as this individual is able to perform assistance or rescue activities without jeopardizing the safety or health of any firefighter working at the incident.

Note 2 to paragraph (g): Nothing in this section is meant to preclude firefighters from performing emergency rescue activities before an entire team has assembled.

Table [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 10-1993, f. 7-29-93, cert. ef. 9-15-93; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 2-2000, f. & cert. ef. 1-28-00; OSHA 12-2001, f. & cert. ef. 10-26-01; OSHA 3-2005, f. & cert. ef. 6-10-05; OSHA 9-2008, f. 9-19-08, cert. ef. 1-1-09; OSHA 8-2009, f. 7-9-09, cert. ef. 10-1-09; OSHA 1-2012, f. & cert. ef. 4-10-12; OSHA 6-2012, f. 9-28-12, cert. ef. 4-1-13; OSHA 4-2015, f. 10-23-15, cert. ef. 7-1-16; OSHA 3-2016, f. & cert. ef. 8-19-16; OSHA 4-2016, f. & cert. ef. 9-7-16; OSHA 2-2017, f. 5-16-17, cert. ef. 11-1-17

437-002-0220

Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, 29 CFR 1910, in the Federal Register:

(1) 29 CFR 1910.176 Handling materials - general, published 10/24/78, FR vol. 43, p. 49749.

(2) 29 CFR 1910.177 Servicing of multi-piece and single piece rim wheels; published 12/27/11, FR vol. 76, no. 248, p. 80735.

(3) 29 CFR 1910.178 Powered industrial trucks, published 11/18/16, FR vol. 81, no. 223, p. 82494.

(4) 29 CFR 1910.179 Overhead and gantry cranes, published 11/18/16, FR vol. 81, no. 223, p. 82494.

(5) 29 CFR 1910.180 Crawler, locomotive and truck cranes, published 3/7/96, FR vol. 61, no. 46, p. 9239.

(6) 29 CFR 1910.181 Derricks, published 3/7/96, FR vol. 61, no. 46, p. 9240.

(7) 29 CFR 1910.182 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9240.

(8) 29 CFR 1910.183 Helicopters, published 6/18/98, FR vol. 63, no. 117, p. 33467.

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(9) 29 CFR 1910.184 Slings, published 6/8/11, Federal Register, vol. 76, no. 110, p. 33590.

(10) 29 CFR 1910.189 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9240.

(11) 29 CFR 1910.190 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9240.

These rules are on file at the Oregon Occupational Safety and Health Division, Department of Consumer and Business Services, and the United States Government Printing Office.

Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 13-1993, f. 8-20-93, cert. ef. 11-1-93; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 2-1999, f. & cert. ef. 4-30-99; OSHA 6-1999, f. & cert. ef. 5-26-99; OSHA 12-2001, f. & cert. ef. 10-26-01; OSHA 7-2003, f. & cert. ef. 12-5-03; OSHA 4-2006, f. & cert. ef. 7-24-06; OSHA 3-2011, f. & cert. ef. 11-1-11; OSHA 4-2011, f. & cert. ef. 12-8-11; OSHA 1-2012, f. & cert. ef. 4-10-12; OSHA 2-2017, f. 5-16-17, cert. ef. 11-1-17

437-002-0300

Adoption by Reference

In addition to and not in lieu of, any other health and safety codes contained in OAR Chapter 437, the Department adopts by reference the following federal regulations printed as part of the Code of Federal Regulations, 29 CFR 1910, in the Federal Register:

(1) Reserved for 29 CFR 1910.261 Pulp, Paper, and Paperboard Mills

(2) 29 CFR 1910.262 Textiles, published 11/18/16, FR vol. 81, no. 223, p. 82494.

(3) 29 CFR 1910.263 Bakery Equipment, published 3/7/96, FR vol. 61, no. 46, p. 9241.

(4) 29 CFR 1910.264 Laundry Machinery and Operations, published 11/7/78, FR vol. 43, p. 51760.

(5) 29 CFR 1910.265 Sawmills, published 11/18/16, FR vol. 81, no. 223, p. 82494.

(6) Reserved for 29 CFR 1910.266 Pulpwood Logging. (NOTE: In Oregon, Pulpwood Logging rules are Oregon-initiated rules provided in Division 7, Forest Activities.)

(7) Reserved for 29 CFR 1910.267 Agricultural Operations

(8) 29 CFR 1910.268 Telecommunications, published 11/18/16, FR vol. 81, no. 223, p. 82494.

(9) 29 CFR 1910.269 Electric power generation, transmission and distribution. Repealed with Oregon OSHA Admin. Order 3-2015, f. 10/9/15, ef. 1/1/16. In Oregon, Division 2/RR applies.

(10) 29 CFR 1910.272 Grain Handling Facilities, and Appendices A, B and C, published 3/7/96, FR vol. 61, no. 46, p. 9242.

(11) 29 CFR 1910.274 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9242.

(12) 29 CFR 1910.275 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9242.

NOTE: These standards are available from the Oregon Occupational Safety and Health Division (OR-OSHA), Department of Consumer and Business Services; and the United States Government Printing Office.

Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295

Hist.: APD 10-1988, f. & ef. 7-7-88; OSHA 23-1990, f. 9-28-90, ef. 12-1-90; OSHA 27-1990, f. 12-12-90, ef. 2-1-91; OSHA 14-1991, f. 10-10-91, cert. ef. 11-1-91; OSHA 7-1993, f. 6-8-93, cert. ef. 8-1-93; OSHA 11-1993, f. 8-4-93, cert. ef. 10-1-93; OSHA 3-1994, f. & cert. ef. 8-1-94; OSHA 6-1995, f. 4-18-95, cert. ef. 6-1-95; OSHA 3-1996, f. & cert. ef. 7-22-96; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 2-1999, f. & cert. ef. 4-30-99; OSHA 3-1999, f. & cert. ef. 4-30-99; OSHA 5-2001, f. & cert. ef. 4-6-01; OSHA 4-2004, f. & cert. ef. 9-15-04; OSHA 4-2005, f. & cert. ef. 12-14-05; OSHA 1-2012, f. & cert. ef. 4-10-12; OSHA 6-2012, f. 9-28-12, cert. ef. 4-1-13; OSHA 3-2015, f. 10-9-15, cert. ef. 1-1-16; OSHA 2-2017, f. 5-16-17, cert. ef. 11-1-17

437-002-0309

Hand Tools

(1) General.

(a) The correct tool shall be selected for the job.

(b) Tools that have been made unsafe by damage or defect shall not be used.

(c) When climbing a tree, workers shall not carry tools in their hands other than tools that are used to assist them in climbing.

(d) Workers shall maintain a safe working distance from other workers when using hand tools.

(e) Tools shall be properly stored or placed in plain sight out of the immediate work area when not in use.

(f) Workers shall not throw or drop tools from trees unless warning has been given and the ground area is clear, and the act of dropping will not endanger personnel.

(2) Pruners and hand saws.

(a) Pole pruners, pole saws, and other similar tools shall be equipped with wood or nonmetallic poles. Actuating cord shall be of nonconducting material.

(b) When inserting a blade in a bow-saw frame, workers shall keep their hands and fingers in the clear when the tension lever snaps into or against the saw frame. When removing a bow-saw blade from the frame, the operator shall stay clear of the blade.

(3) Chopping tools – axes, brush hooks, machetes, and others.

(a) Chopping tools that have loose or cracked heads or splintered handles shall not be used.

(b) Chopping tools shall never be used while working aloft.

(c) Chopping tools shall be swung away from the feet, legs, and body, using the minimum power practical for control.

(d) Chopping tools shall not be driven as wedges or used to drive metal wedges unless specifically designed to be driven or to be used to drive wedges.

(4) Injector tools for applying herbicides.

(a) The bit of injector tools shall be covered with a shield when not in use.

(b) Injectors shall be laid flat on the ground when not in use.

(c) The injector shall not be carried on the shoulders but shall be carried by the loop handle on the downhill side, with the bit properly shielded and facing to the rear.

(5) Grub hoes, mattocks and picks.

(a) The blade eye shall be tight-fitting and wedged so that it cannot slide down the handle.

(b) When swinging grub hoes, mattocks, and picks, the worker shall have a secure grip and firm footing.

(6) Cant hooks, cant dogs, tongs, and carrying bars.

(a) Hooks shall be firmly set before applying pressure.

(b) Tools with cracked, splintered, or weakened handles shall not be used.

(c) Workers shall be warned and shall be in the clear before logs are moved.

(d) The points of hooks shall be at least 2 inches long and kept sharp.

(e) Workers shall stand to the rear and uphill when rolling logs.

(7) Wedges, chisels, and gouges.

(a) Wedges, chisels, and gouges shall be inspected for cracks and flaws before use.

(b) Wedges and chisels shall be properly pointed and tempered. Tools with mushroomed heads shall not be used.

(c) Only wood, plastic, or soft-metal wedges shall be used with power saws.

(d) Wood-handled chisels shall be protected with a ferrule on the striking end.

(8) Hammers, mauls, and sledges. Wood, rubber or high-impact plastic mauls, sledges, or hammers shall be used when striking wood-handled chisels or gouges.

(9) Ropes.

(a) Climbing ropes shall be used when working aloft in trees. Climbing ropes shall have a minimum diameter of 1/2-inch and be a 3- or 4-strand first-grade manila with a nominal breaking strength of 2385 pounds or its equivalent in strength and durability. Synthetic rope shall have a maximum elasticity of not more than 7 percent.

(b) Rope made unsafe by damage or defect, or for any other reason, shall not be used.

(c) Rope shall be stored away from all cutting edges and sharp tools. Corrosive chemicals, gas, and oil shall be kept away from rope.

(d) Climbing ropes and safety lines shall not be used to lower limbs or other parts of trees or to raise or lower equipment.

(e) When stored, rope shall be coiled and piled, or suspended, so that air can circulate through the coils.

(f) Rope ends shall be secured to prevent unraveling.

(g) Climbing and safety rope shall not be spliced to effect repair.

(h) Safety snaps shall be rotated from one end of the rope to the other, as needed, and the worn end cut off.

(i) A handline shall be used for raising or lowering tools and limbs.

(10) Tackle blocks and pulleys. Tackle blocks and pulleys shall be inspected immediately before use and shall be condemned if defective, in accordance with procedures given in ANSI/ASME B30.9-1984, B30.9a-1985, and B30.9b-1987, Safety Standard for Slings.

(11) Ladders.

(a) When using portable ladders to climb trees, the ladder shall be tied to the tree or supported by another worker. When working from a ladder during cutting operations, the ladder shall be securely tied or braced, and the worker tied in as required by OAR 437-002-0310(1)(a)(A).

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(b) Ladders, platforms, and aerial devices, including insulated aerial devices, shall not be placed in a position where they could contact an electrical conductor. Reliance shall not be placed on their dielectric capabilities.

(c) Ladders made of metal or other conductive material shall not be used where an electrical hazard exists. Only approved wood ladders (constructed in accordance with ANSI A14.1-1982, Safety Requirements for Portable Wood Ladders, or nonconductive ladders made of synthetic material equal to or exceeding the strength of approved wood ladders, shall be used.

(d) Metal ladders used where no electrical hazard exists shall conform to ANSI A14.2-1982, Safety Requirements for Portable Metal Ladders.

(e) All ladders shall be inspected daily before use. Unsafe ladders shall not be used.

(f) The attaching of cleats, metal points, and safety feet; lashing; or other effective means of securing the ladder shall be used if there is danger of its slipping.

(g) Ladders shall be supported while in storage so they will not sag. Except when on mobile equipment, ladders shall be stored under suitable cover, protected from the weather, and kept in a dry location away from excessive heat.

(h) Ladders shall not be used as bridges or inclined planes to load or handle logs or other material.

(12) Climbing spurs. Climbing spurs shall be of the tree-climbing type and have gaffs suitable for the tree being climbed.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 654.025(2) & 656.726(3)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 27-1990, f. 12-12-90, cert. ef. 2-1-91; OSHA 1-1996, f. & cert. ef. 2-16-96;

OSHA 2-2017, f. 5-16-17, cert. ef. 11-1-17

437-002-0310

Work Procedures

(1) Climbing.

(a) A tree worker shall be tied in with an approved type of climbing rope and safety saddle when working 4 feet above the ground. A safety strap or rope with snaps may be used for additional protection.

(A) When working from a ladder more than 10 feet above the adjacent ground line, the worker must be tied in with an approved type of climbing rope and safety saddle.

(B) When working from a scaffold more than 10 feet above the adjacent ground line, and an exposure to a fall hazard exists, the employee shall be tied in with the climbing rope and safety saddle.

(b) Limbs shall be inspected, while climbing, before applying weight. The climber shall not trust the capability of a dead branch to support his/her weight. Dead branches shall be broken off on the way up, if possible. Hands and feet shall be placed on separate limbs, if possible.

(c) The climbing rope shall be passed around the trunk of the tree as high as possible using branches with a wide crotch to prevent any binding of the safety rope. The crotch selected for tying in shall be over the work area as much as possible, but located in such a way that a slip or fall would swing the worker away from any electrical conductor. The rope shall also be passed around the main leader or an upright branch, using the limb as a stop. Feet, hands, and ropes shall be kept out of tight V-shaped crotches.

(d) The location of all electrical conductors shall be noted in relation to work procedures. The worker shall climb on the side of the tree that is away from electrical conductors, if possible.

(e) A figure-eight knot shall be tied in the end of the rope, particularly in the case of high trees. This will prevent pulling the rope accidentally through the taut line-hitch and possible serious injury from a fall.

(f) The climbing line shall be crotched as soon as practical after the worker is aloft, and a taut line-hitch tied and checked.

(g) The worker shall be completely secured with the climbing line before starting operations.

(h) The worker shall remain tied in until the work is completed and the worker has returned to the ground. If it is necessary to recrotch the rope in the tree, the worker shall retie the rope or use the safety strap before releasing the previous tie.

(2) Pruning and Trimming.

(a) Pole pruners and pole saws shall be hung securely in a vertical position to prevent dislodging. Pole pruners or pole saws shall not be hung on utility wires or cables, or left in the tree overnight. Pole saws shall be hung so that the sharp edge is away from the worker.

(b) A scabbard or sheath shall be hooked to the belt or safety saddle to carry the handsaw when not in use.

(c) Warnings, when necessary, shall be given by the worker in the tree before a limb is dropped.

(d) A separate line shall be attached to limbs which cannot be dropped or are too heavy to be controlled by hand. The line shall be held by workers on the ground end of the rope. Use of the same crotch for both safety rope and work rope shall be avoided.

(e) Cut branches shall not be left in trees overnight.

(f) A climbing rope shall never be left in a tree overnight. A service line shall be put up for overnight or longer.

(g) The climber shall inspect the rope for cuts or abrasions before starting work. If any cuts or serious abrasions are found, the rope shall be discarded, used for some other purpose, or the defective section cut off.

(h) During all tree working operations aloft, there shall be a second worker in the vicinity. This shall not apply to utility workers engaged in tree trimming incidental to their normal occupation, or to one-man service crews.

(3) Cabling.

(a) In cabling operations, branches which are to be cabled shall be brought together to the proper distance by means of a block and tackle, a hand winch, a rope, or a rope with a come-along.

(b) Not more than two persons shall be in the tree working at opposite ends during cabling installation.

(c) When releasing the block and tackle, workers in trees shall be off to one side in case the lag hooks pull out under strain.

(d) Ground workers shall not stand under the tree when cable is being installed.

(e) Tools used for cabling, bark tracing, cavity work, etc., shall be carried in a bag or belt designed to hold tools, not put in the pocket or stuck in the top of a boot.

(4) Topping.

(a) Workers doing topping shall make sure the trees are able to hold the strain of a topping procedure. If not, some other means of lowering the branches shall be provided, such as a tree crane.

(b) If large limbs are lowered in sections, the worker in the tree shall be above the limb being lowered.

(c) Guidelines, handlines, or tag lines shall be used when conditions warrant their use.

(5) Felling.

(a) Before beginning any felling operation, a safety plan shall be developed which shall consider:

(A) The tree and the surrounding area for anything that may create a hazard when the tree falls;

(B) The shape of the tree;

(C) The lean of the tree;

(D) Wind force and direction;

(E) Decayed or other weak spots; and

(F) The location of other persons or structures.

(b) The work area shall be cleared to permit safe working conditions, and an escape route shall be planned before any cutting is started.

(c) Each tree worker shall be instructed as to exactly what is to be done during the felling operation. All workers not directly involved shall be at least two tree lengths away from the tree being felled.

(d) A notch and backcut shall be used in felling trees over 5 inches diameter breast high. No tree shall be felled by "ripping" or "slicing" cuts.

(e) The depth or penetration of the notch shall be approximately one-third the diameter of the tree.

(f) The opening or height of the notch shall be approximately 2-1/2 inches for each foot in diameter of the tree.

(g) The backcut shall be made higher than the point or apex of the notch to prevent kickback.

(h) Just before the tree is ready to fall, an audible warning shall be given to those in the area.

(i) If there is danger that the tree being felled may fall the wrong way or damage property; wedges, block and tackle, rope, or wire cable (except where an electrical hazard exists) shall be used. All limbs shall be removed from trees to a height and width sufficient to allow the tree to fall clear of any wires and other objects in the vicinity.

(j) Special precautions in roping rotten or split trees shall be taken to prevent the tree from falling in an unexpected direction even though the cut is made on the proper side.

(k) The faller shall retreat to a safe location when a tree is committed to fall.

(6) Chipper equipment and operation.

Equipment Design

(a) Enclose chipper rotating components in a housing capable of retaining broken chipper knives or foreign material.

(b) Chipper feed chutes and side members must be designed to prevent operator contact with rotating blades during normal operation.

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(c) Chippers without a mechanical infeed system must have:

(A) An infeed hopper that measures at least 85 inches from the blades or knives to ground level at the centerline of the hopper.

(B) A flexible antikickback device in the feed hopper. This device must protect the operator and other persons in the area from flying chips and debris.

(C) A shut-off switch within convenient reach of the worker feeding the chipper.

(d) Chippers with a mechanical infeed system must have a quick stop reversing device on the infeed. The quick stop reversing device control lever must be across the top and along each side of the hopper, as close to the feed end of the hopper as practicable within easy reach of the operator.

Worker Apparel

(e) Employees in the immediate area of an operating chipper must wear personal protective equipment as required by Subdivision I of this Division.

(f) Workers feeding chippers must not wear loose clothing, gauntlet-type gloves, rings or watches.

Work Practices

(g) Prevent accidental restart of equipment shut down for adjustment or repair as required by Division 2/J, 1910.147, Lockout/Tagout.

(h) Guard exposed adjacent blades when replacing chipper blades.

(i) Close and secure all access panels before operating the chipper.

(j) The chipper operator must have a coworker in the immediate vicinity when feeding chipper.

(k) Do not feed foreign objects into chipper.

(l) Feed chippers from the side of the centerline. The operator must immediately turn away from the feed table as brush is drawn into the rotor. Feed chippers from curbside whenever practical.

(m) Feed and discharge chutes must be in place to prevent contact with rotating blades during chipper operation.

(n) Chipper operators must be familiar with the manufacturer's operating instructions, maintenance and safe work practices.

(o) When trailer chippers are detached from trucks they must be chocked or otherwise secured.

(p) Before towing chipper, cross safety chains under the tongue of the chipper and attach them to the towing vehicle.

(7) Limbing and bucking.

(a) The tree worker shall work on the side opposite the side on which the limb is being cut.

(b) The tree worker shall stand on the uphill side of the work.

(c) Branches bent under tension shall be considered hazardous.

(d) The tree worker shall block the log to prevent rolling, when necessary.

(e) When bucking up trunks of trees, wedges shall be used as necessary to prevent binding of the guide bar or chain.

(8) Storm work and emergency conditions.

(a) Since storm work and emergency conditions create special hazards, only authorized representatives of the electric utility system operator/owner may perform tree work in these situations where energized electrical power conductors are involved.

(b) When an emergency condition develops due to tree operations, work shall be suspended and the system operator/owner shall be notified immediately.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 27-1990, f. 12-12-90, cert. ef. 2-1-91; OSHA 5-2001, f. & cert. ef. 4-6-01; OSHA 2-2017, f. 5-16-17, cert. ef. 11-1-17

437-002-0311

Mobile Equipment

(1) All vehicles shall comply with OAR 437-002-0223 in Division 2/N, Material Handling and Storage.

(2) All aerial lifts shall comply with Division 2/F, 1910.67, Vehicle-Mounted Elevating and Rotating Work Platforms.

(3) When an aerial lift device contacts an electrical conductor, the truck supporting the aerial lift device shall be considered as energized.

(4) Sprayers and related equipment.

(a) Working and walking surfaces of all sprayers and related equipment shall be covered with slip-resistant material.

(b) Equipment on which workers stand and spray while the vehicle is in motion shall be equipped with guardrails around the working area. The guardrailings shall be constructed in accordance with Division 2/D.

(5) Stump cutters.

(a) Stump cutters shall be equipped with enclosures or guards that effectively protect the operator.

(b) The operator and workers in the immediate area shall wear eye protection.

Stat. Auth.: ORS 654.025(2) & 656.726(3)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 27-1990, f. 12-12-90, cert. ef. 2-1-91; OSHA 2-2017, f. 5-16-17, cert. ef. 11-1-17

437-002-0312

Oregon Rules for Pulp, Paper and Paperboard Mills

(1) General Requirements.

(a) Application. This section applies to establishments where pulp, paper, and paperboard are manufactured or converted. This section does not apply to logging and the transportation of logs to pulp, paper, and paperboard mills.

(b) Standards incorporated by reference. Standards covering issues of occupational safety and health which have general application without regard to any specific industry are incorporated by reference in sections (2) through (14) of this rule and in subsections (c) and (d) of this rule and made applicable under this rule. Such standards shall be construed according to the rules set forth in §1910.5, Applicability of Standards, in Subdivision A.

(c) General incorporation of standards. Establishments subject to this section shall comply with the following standards of the American National Standards Institute:

(A) Safety Requirements for Floor and Wall Openings, Railings, and Toeboards, A10.18-1983.

(B) Scheme for the Identification of Piping Systems, A13.1-1981 (R1993).

(C) Safety Code for Portable Wood Ladders, A14.1-1990.

(D) Safety Code for Portable Metal Ladders, A14.2-1990.

(E) Safety Code for Fixed Ladders, A14.3-1990.

(F) Safety Code for Cranes, Derricks, and Hoists, B30.2-1990.

(G) Overhead and Gantry Cranes, B30.17-1992.

(H) Crawler, Locomotive, and Truck Cranes, B30.8-1993.

(I) Safety Code for Woodworking Machinery, ANSI O1.1-1992.

(J) Method of Measurement of Real-Ear Protection of Hearing Protectors – Physical Attenuation of Ear Muffs, ANSI S3.19-1974 (R1990).

(K) Practice for Occupational and Educational Eye and Face Protection, ANSI Z87.1-1989.

(L) Requirements for Sanitation in Places of Employment, ANSI Z4.1-1986.

(M) Fundamentals Governing the Design and Operation of Local Exhaust Systems, Z9.2-1979 (R 1991).

(N) Practices for Respiratory Protection, ANSI Z88.2-1992.

(O) Safety Requirements for Industrial Head Protection, ANSI Z89.1-1986.

(P) Safety Color Code, ANSI Z535.1-1991.

(Q) Practice for the Inspection of Elevators (Inspector's Manual), ANSI/ASME A17.2-1988.

(R) Safety Code for Elevators, Dumbwaiters, and Moving Walks, ANSI/ASME A17.1-1990.

(S) Safety Code for Mechanical Power-Transmission Apparatus, ANSI/ASME B15.1-1992.

(T) Safety Code for Conveyors, Cableways, and Related Equipment, ANSI/ASME B20.1-1993.

(U) Power Piping, ANSI/ASME B31.1-1992.

(V) Safety Code for Powered Industrial Trucks, ANSI/ASME B56.1.

(W) Practice for Industrial Lighting, ANSI/IES RP-990.

(X) Installation of Blower and Exhaust Systems for Dust, Stock, and Vapor Removal or Conveying, ANSI/NFPA 91-1992.

(Y) Fire Department Self-Contained Breathing Apparatus Program, ANSI/NFPA 1404-1989.

(Z) Safety Code for Ventilation and Operation of Open-Surface Tanks, ANSI/UL 641-1985.

(d) Other standards. The following standards shall be considered standards under this section:

(A) ASME Boiler and Pressure Vessel Code, Section VIII, Unfired Pressure Vessels 1992, including addenda.

(B) Building Exits Code for Life Safety from Fire, NFPA 101-1991.

(C) NFPA Code for Prevention of Sulfur Fires and Explosions, NFPA 655-1993.

(D) Safety in the Transportation, Storage, Handling and Use of Explosives, IME Pamphlet No. 17, March 1987, Institute of Makers of Explosives.

(2) Employee Training.

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(a) Employees shall not be permitted to operate any machine or equipment until they have received proper training and are familiar with safe operating procedures.

(b) Employees shall be trained in proper lifting or moving techniques and methods. Mechanical devices should be used or employees should ask for assistance in lifting or moving heavy objects.

(c) In each area where hazardous substances may be encountered, personnel shall be trained to cope with emergencies arising from breaks, ruptures, or spills which would create a hazardous condition.

(d) Any faulty equipment or hazardous condition shall be promptly reported to the person in charge.

(e) When an employee is assigned to work alone in a remote or isolated area, a system shall be instituted whereby such employee reports to someone or a designated person shall check on his or her safety. The procedure shall designate the method of contact and the frequency. All persons will be trained on the procedures.

(3) Safe Practices.

(a) Guards. All driving mechanisms, power transmission apparatus, and prime movers shall be constructed, guarded, and used in conformity with Subdivision O, Machinery and Machine Guarding.

(b) Inspection of controls and safety devices. Brakes, back stops, antirunaway devices, overload releases, and other safety devices shall be inspected and tested frequently to insure that all are operative and maintained in good repair.

(c) Personal protective clothing and equipment. Personal protective clothing and equipment shall be provided and worn in accordance with Subdivision I, Personal Protective Equipment. Respiratory protection must conform to the requirements of §1910.134 of Subdivision I.

(d) Floors and platforms. Floors, platforms, and work surfaces shall be guarded and maintained in accordance with Subdivision D, Walking-Working Surfaces.

(e) Lockouts. Lockout/tagout shall be in accordance with the requirements of §1910.147, in Subdivision J, with the exception that:

(A) There will be no tagouts allowed in lieu of lockout for that which can be locked out. Tags are provided for identification and information purposes only.

(B) Persons engaged in repair, inspection, maintenance, or clean-up shall lockout the affected equipment, retain possession of the keys to the locks, and personally remove the lock and tag upon completion of the work.

(C) Group lockout. (See Appendices A and B.)

(i) When servicing and/or maintenance is performed by a crew, craft, department or other group, they shall utilize a procedure which affords the employees a level of protection equivalent to that provided by the implementation of a personal lockout device.

(ii) Group lockout devices shall be used in accordance with the procedures required by §1910.147(c)(4) including, but not necessarily limited to, the following specific requirements.

(I) Primary responsibility is vested in an authorized employee for a set number of employees working under the protection of a group lockout device (such as an operations lock);

(II) Provision for the authorized employee to ascertain the exposure status of individual group members with regard to the lockout of the machine or equipment; and

(III) When more than one crew, craft, department, etc. is involved, assignment or overall job-associated lockout control responsibility to an authorized employee designated to coordinate affected work forces and ensure continuity of protection; and

(IV) Each authorized employee shall affix a personal lockout device to the group lockout device, group lockbox, or comparable mechanism when he or she begins work, and shall remove those devices when he or she stops working on the machine or equipment being serviced or maintained; and

(V) Any person involved in the lockout process shall have the right to place their own lock at each lockout location where group lockout procedures have been allowed.

(f) Confined space entry. Confined space entry shall be in accordance with 437-002-0146 Confined Spaces, in Subdivision J.

(g) Industrial power trucks.

(A) All industrial power trucks and operations shall conform to §1910.178, Powered Industrial Trucks, Subdivision N, Material Handling and Storage. All forklift trucks shall be provided with overhead guards. Design requirements shall provide protection for the liquid petroleum gas tank. All guards shall be designed in compliance with §1910.178, Powered Industrial Trucks, in Subdivision N.

(B) Mirrors or other methods to ensure visibility shall be installed at blind corners or intersections which will allow operators to observe oncoming traffic.

(C) Every power truck operated from an end platform or standing position shall be equipped with a platform extending beyond the operator's position, strong enough to withstand a compression load equal to the weight of the loaded vehicle applied along the longitudinal axis of the truck with the outermost projection of the platform against the flat vertical surface.

(D) Pushing of vehicles or rail cars with the forks or clamps of a lift truck is prohibited.

(h) Emergency lighting.

(A) Emergency lighting shall be provided wherever it is necessary for employees to remain at their machines or stations to shut down equipment in case of power failure. Emergency lighting shall be provided at stairways and passageways or aiseways used by employees for emergency exit in case of power failure. Emergency lighting shall be provided in all plant first aid and medical facilities.

(B) Emergency lighting shall be maintained in accordance with the manufacturer or engineering specifications, and shall be checked at least every 30 days for defects.

(i) Electrical equipment. All electrical installations and electrical utilization equipment shall comply with the National Electrical Code requirements and the provisions of Subdivision S, Electrical.

(4) Handling and Storage of Pulpwood and Pulp Chips.

(a) Handling pulpwood with forklift trucks. Where large forklift trucks, or lift trucks with clam-jaws, are used in the yard, the operator's enclosed cab shall be provided with an escape hatch, whenever the hydraulic arm blocks escape through the side doors.

(b) Handling pulpwood with cranes or stackers.

(A) Where locomotive cranes are used for loading or unloading pulpwood, the pulpwood shall be piled so as to allow a clearance of not less than 24 inches between the pile and the end of the cab of any locomotive crane in use, when the cab is turned in any working position.

(B) The minimum distance of the pulpwood pile from the centerline of a standard-gage track shall be maintained at not less than 8-1/2 feet.

(C) Logs shall be piled in an orderly and stable manner, with no projection into walkways or roadways.

(D) Rail cars shall not be spotted on tracks adjacent to the locomotive cranes unless a 24 inch clearance is maintained, as required in section 4)(b)(A) of this rule.

(E) The handling and storage of other materials shall conform to sections 4)(b)(A) and (B) of this rule with respect to clearance.

(F) Equipment and practices shall conform to American National Standards B30.2-1990 and B30.2.0-1967.

(G) Personal protective equipment for such uses as foot, head, and eye protection shall be required for workers on a job basis.

(H) No person shall be permitted to walk beneath a suspended load, bucket, or hook.

(c) Pulpwood storage and handling.

(A) Unauthorized vehicles and unauthorized foot traffic shall not be allowed in any active sorting, storing, loading, or unloading areas.

(B) Unloading lines shall be so arranged that it is not necessary for the workers to attach them on the pond or dump side of the load.

(C) Jackets or vests of fluorescent or other high visibility material shall be worn by persons working on dry land log storage.

(D) Wire rope doglines used for towing or rafting shall not be used when:

(i) They acquire jagers to the extent that they present a hazard to the workers handling them; or

(ii) When they are weakened to the extent that they are hazardous.

(E) Boom sticks shall be capable of safely supporting the weight imposed upon them.

(F) Stiff booms shall be made by fastening not less than two boom sticks together. The width of the stiff boom shall be not less than 36 inches measured from outside to outside of the outer logs. The boom sticks shall be fastened together with not less than 4-inch by 6-inch cross ties or cable lashing properly recessed into notches in the boom sticks and secured.

(G) Pike poles shall be kept in good repair. Conductive pike poles shall not be used where it is possible that they may come in contact with electrical conductors.

(H) All log dumps shall be periodically cleared of bark and other debris.

(I) When cutting bands on bundled logs, workers shall position themselves in a safe location. Double-bitted axes shall not be used for cutting

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bands. Caution shall be used to prevent being struck by ends of bands being cut and, if needed, personal protective equipment shall be worn.

(J) Storing or sorting on water, or any boom work other than boom boat operations, shall require a minimum of two persons.

(d) Handling pulpwood from ships.

(A) Ladders and gangplanks with railings to boat docks shall meet the requirements of American National Standards A10.18-1983, A14.1-1990, A14.2-1990, and A14.3-1990, and shall be securely fastened in place.

(B) The hatch tender shall be required to signal the hoisting engineer to move the load only after the employees working in the hold are in the clear.

(C) The air in the ship's hold, tanks, or closed vessels shall be tested for oxygen deficiency and for toxic, explosive and combustible gases and vapors.

(e) Handling pulpwood from flatcars and all other rail cars.

(A) Railroad flatcars for the conveyance of pulpwood loaded parallel to the length of the car shall be equipped with safety-stake pockets.

(B) Where pulpwood is loaded crosswise on a flatcar sufficient stakes of sizes not smaller than 4 by 4 inches shall be used to prevent the load from shifting.

(C) When it is necessary to cut stakes, those on the unloading side should be partially cut through first, and then the binder wires cut on the opposite side. Wire cutters equipped with long extension handles shall be used. No person shall be permitted along the dumping side of the car after the stakes have been cut.

(D) When steel straps without stakes are used, the steel straps shall be cut from a safe area to prevent employees from being struck by the falling logs.

(E) Flatcars and all other cars shall be chocked during unloading. Where equipment is not provided with hand brakes, rail clamping chocks shall be used.

(F) A derail shall be used to prevent movement of other rail equipment into cars where persons are working.

(f) Handling pulpwood from trucks.

(A) Cutting of stakes and binder wires shall be done in accordance with section (4)(e)(C) of this rule.

(B) Where binder chain and steel stakes are used, the binder chains shall be released and the stakes tripped from the opposite side of the load spillage.

(C) Where binder chains and crane slings are used, the crane slings shall be attached and taut before the binder chains are released. The hooker shall see that the helper is clear before signaling for the movement of the load.

(D) The truck driver shall leave the truck cab and be in the clear, in a designated area, and shall be in clear view of the unloading equipment operator while the unloader is approaching the loaded truck.

(E) The truck driver shall remain outside the cab and clear of the load while logs are being unloaded except that, after a complete load is lifted as a unit and held stationary, the driver may enter the cab and drive forward from under the suspended load.

(F) Log unloaders shall not be moved about the premises with loads raised higher than absolutely necessary.

(g) Handling pulp chips from rail cars.

(A) All cars shall be securely fastened in place and all employees in the clear before dumping is started.

(B) Personal protective equipment for such uses as foot, head, and eye protection shall be provided, and employees shall wear the equipment when working in the woodyard. Ear protection shall be provided when the noise level may be harmful.

(C) When a rollover-type unloading device is used for removing chips from cars, the cars shall be properly secured in place, and all employees shall be in the clear before dumping operation is started.

(h) Handling pulp chips and hog fuel from trucks and trailers.

(A) All trucks and trailers shall be secure and all employees in the clear before dumping is started.

(B) Personal protective equipment necessary to protect workers from hazards shall be provided and worn.

(C) Elevating platform-type or cable-lift type unloading devices shall have adequate back bumper stops.

(D) Side rails or other positive means to prevent the truck and/or trailer from falling shall be used while unloading the single trailer units.

(E) All persons shall be clear of all hoisting or elevating mechanisms before dumping commences.

(F) No person shall remain in any truck while the truck is being elevated.

(G) A safe area and suitable device shall be provided for the chip tester to use while taking chip samples.

(H) Rolled chip nets shall not be positioned where they cover the ladders on rail cars or trucks.

(I) Chip and hog fuel storage.

(i) When mobile equipment is used on top of hog fuel or chip piles, a roll-over protection system shall be installed on the equipment. If the cab is of the enclosed type, windshield wipers shall be installed.

(ii) Hog fuel bins shall be provided with standard railed platform or walkways near the top or other equally effective means shall be provided for use by employees engaged in dislodging hog fuel.

(iii) Extreme care shall be taken to prevent chips or hog fuel from creating an overhang or bridging.

(iv) Employees shall be prohibited from working under overhangs or bridges.

(J) Chip and sawdust bins. Steam or compressed-air lances, or other facilities, shall be used for breaking down the arches caused by jamming in chip lofts. No worker shall be permitted to enter a bin unless done in accordance with §1910.146, Permit-Required Confined Spaces, in Subdivision J.

(i) Crane operations.

(A) Crane boom and load capacities as specified by the manufacturer shall be posted in the cab of the crane in accordance with §1910.180, Crawler, Locomotive and Truck Cranes, in Subdivision N, Material Handling and Storage.

(B) A safety device such as a heavy chain or cable at least equal in strength to the lifting cables shall be fastened to the boom and to the frame of the boom crane (if it is other than locomotive) at the base. Alternatively, a telescoping safety device shall be fastened to the boom and to the cab frame, so as to prevent the boom from snapping back over the cab in the event of lifting cable breakage.

(C) A crane shall not be operated where any part thereof may come within 10 feet of overhead powerlines (or other overhead obstructions) unless the powerlines have been de-energized, or clearances are maintained as specified in §1910.303, General Requirements, in Subdivision S, Electrical.

(D) Standard signals for the operation of cranes shall be established for all movements of the crane, in accordance with American National Standards B30.2-1990 and B30.8-1988.

(E) Only one member of the crew shall be authorized to give signals to the crane operator.

(F) All cranes shall be equipped with a suitable warning device such as a horn or whistle.

(G) A sheave guard shall be provided beneath the head sheave of the boom.

(H) Grapples, tongs, and buckets shall not be left suspended when not in use.

(j) Traffic warning signs or signals.

(A) A flagger shall direct the movement of cranes or locomotives being moved across railroad tracks or roads, and at any points where the vision of the operator is restricted. The flagger must always remain in sight of the operator when the crane or locomotive is in motion. The blue flag policy shall be used to mark stationary cars day and night. This policy shall include marking the track in advance of the spotted cars (flag for daytime, light for darkness).

(B) After cars are spotted for loading or unloading, warning flags or signs shall be placed in the center of the track at least 50 feet away from the cars and a derail set to protect workers in or on the car.

(k) Rail car operations and railroad warning devices.

(A) On a dead end spur, a blue signal may be displayed adjacent to the switch opening while cars are being loaded or unloaded. When such warning devices are displayed, the equipment shall not be coupled to or moved.

(B) Equipment which would obscure the blue signal shall not be placed on the track.

(C) Each maintenance crew shall display and remove its own set of blue signals.

(D) A flashing warning light or other device shall be installed near any opening which leads to a passageway crossing railroad tracks adjacent to the building. Such light or device shall be activated prior to any switching or movement of railroad equipment to warn workers of the dangerous condition in the area.

(E) Workers shall not crawl under or pass between coupled rail cars to cross tracks.

(F) An audible whistle, horn, or bell shall be sounded by the locomotive engineer to give adequate warning prior to switching across any road crossing.

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(G) When switching railroad equipment in congested areas or across roadways or walkways, "flying switches" shall be prohibited.

(H) All freight car doors shall be inspected before workers open or close them. A safe method shall be used to open or close the door.

(I) Illumination. Artificial illumination shall be provided when loading or unloading is performed after dark, in accordance with American National Standard ANSI/IES-RP-1990, Practice for Industrial Lighting.

(m) Bridge or dock plates.

(A) The construction and use of bridge or dock plates shall conform to requirements of Subdivision D.

(B) The sides of bridge or dock plates shall have an upturn or lip of at least 4 inches covering the area between the edge of the loading dock and edge of car or truck floor whenever the distance exceeds 18 inches to prevent wheeled equipment from running off the sides.

(C) Bridge or dock plates shall have at least 6 inches bearing surface on the loading dock.

(D) Bridge or dock plates intended to be moved by mechanized equipment shall be designed for this purpose or attachments for safe handling shall be used.

(n) Hand tools. Handles of wood hooks shall be locked to the shank to prevent them from rotating.

(o) Removal of pulpwood.

(A) The ends of a woodpile shall be properly sloped and cross-tied into the pile. Upright poles shall not be used at the ends of woodpiles. To knock down wood from the woodpile, mechanical equipment shall be used to permit employees to keep in the clear of loosened wood.

(B) If dynamite is used to loosen the pile, only authorized personnel shall be permitted to handle and discharge the explosive. An electric detonator is preferable for firing; if a fuse is used, it shall be an approved safety fuse with a burning rate of not less than 120 seconds per yard and a minimum length of 3 feet, in accordance with "Safety in the Transportation, Storage, Handling and Use of Explosives", IME Pamphlet No. 17, March 1987.

(p) Log hauls, slips and carriages.

(A) Controls shall be arranged to operate from a position where the operator will at all times be in the clear of logs, machinery, lines, and rigging.

(B) Controls shall be marked to indicate their function.

(C) An effective method of disengaging the head rig saws from the power unit shall be installed on all head rigs where the power unit is not directly controlled by the sawyer. The saws shall be disengaged from the source of power which shall be locked out before repairs or changes are made.

(D) When needed for protection of personnel, an automatic stop or interlocking device shall be installed on log hauls or slips.

(E) A barricade or other positive stop of adequate strength shall be provided to protect the sawyer from rolling logs.

(F) A guard shall be provided to prevent logs from rolling off the log deck into the well.

(G) The sawyer shall be safeguarded either by his or her location or by use of substantial screens or approved safety glass.

(H) A substantial stop or bumper shall be installed at each end of the carriage run.

(I) Canting gear or other equipment shall not be allowed to hang over the log deck in such a manner as to endanger employees.

(J) Canting gear controls shall be marked to indicate their function.

(K) The sawyer shall be primarily responsible for the safety of the carriage crew and offbearers. He or she shall exercise due care in the operation of the carriage and log turning devices.

(L) A control device shall be provided so that the sawyer may stop the head rig section of the mill without leaving his or her stand.

(M) The feed control lever of friction or belt-driven carriage feed works shall be designed to operate away from the saws or carriage track.

(N) Feed works and log turning control levers shall be so arranged that they may be secured when not in use and shall be adequately guarded against accidental activation.

(O) Carriages upon which persons are required to work shall be solidly decked over and the employees properly protected.

(P) Substantial sweeps shall be installed in front of each carriage wheel. Such sweeps shall extend to within 1/4 inch of the rails.

(Q) Where power-operated log turners are used, carriage knees shall be provided with goosenecks or other substantial means of protecting the carriage crew.

(q) Belt conveyors.

(A) The sides of the conveyor shall be constructed so that the pulpwood will not fall off.

(B) Where conveyors cross passageways or roadways, a horizontal platform shall be provided under the conveyor extending out from the sides of the conveyor a distance equal to 1 1/2 times the length of the wood handled. The platform shall extend the width of the road plus 2 feet on each side and shall be kept free of wood and rubbish. The edges of the platform shall be provided with toeboards or other protection to prevent wood from falling, in accordance with American National Standard A10.18-1983.

(C) All conveyors for pulpwood shall have the in-running nips between chain and sprockets guarded; also, turning drums shall be guarded.

(D) Every belt conveyor shall have an emergency stop cable extending the length of the conveyor so that it may be stopped from any location along the line, or conveniently located stop buttons within 10 feet of each work station, in accordance with American National Standard ANSI/ASME B20.1-1993.

(r) Signs. Where conveyors cross walkways or roadways in the yards, signs reading "Danger - Overhead Conveyor" or an equivalent warning shall be erected, in accordance with American National Standard for Safety Color Code, ANSI Z535.1-1991 or ANSI Z535.2-2011.

(5) Handling and Storage of Raw Materials Other Than Pulpwood or Pulp Chips.

(a) Personal protective equipment.

(A) Whenever possible, all dust, fumes, and gases incident to handling materials shall be controlled at the source, in accordance with OAR 437-002-0382, Oregon Rules for Air Contaminants, in Subdivision Z. Where control at the source is not possible, respirators with goggles or protective masks shall be provided, and employees shall wear them when handling alum, clay, soda ash, lime, bleach powder, sulfur, chlorine, and similar materials, and when opening rag bales.

(B) When handling liquid acid or alkali, workers shall be provided with approved eye and face protection and protective clothing, in accordance with Subdivision I, Personal Protective Equipment.

(b) Clearance.

(A) When materials are being piled inside a building and upon platforms, an aisle clearance at least 3 feet greater than the widest truck in use shall be provided.

(B) Baled paper and rags stored inside a building shall not be piled closer than 18 inches to walls, partitions, or sprinkler heads.

(c) Piling and unpling pulp.

(A) Piles of wet lap pulp (unless palletized) shall be stepped back one-half the width of the sheet for each 8 feet of pile height. Sheets of pulp shall be interlapped to make the pile secure. Pulp shall not be piled over pipelines to jeopardize pipes, or so as to cause overloading of floors, or to within 18 inches below sprinkler heads.

(B) Piles of pulp shall not be undermined when being unplied.

(C) Floor capacities shall be clearly marked on all floors.

(d) Chocking rolls.

(A) Where rolls are pyramided two or more high, chocks shall be installed between each roll on the floor and at every row. Where pulp and paper rolls are stored on smooth floors in processing areas, rubber chocks with wooden core shall be used.

(B) When rolls are decked two or more high, the bottom rolls shall be chocked on each side to prevent shifting in either direction.

(6) Preparing Pulpwood.

(a) Gang and slasher saws. A guard shall be provided in front of all gang and slasher saws to protect workers from wood thrown by saws. A guard shall be placed over tail sprockets.

(b) Slasher tables. Saws shall be stopped and power switches shall be locked out and tagged whenever it is necessary for any person to be on the slasher table.

(c) Slasher drive belts, pulleys, and shafts. All belts, pulleys, and shafts shall be guarded in accordance with American National Standard ANSI/ASME B15.1-1992.

(d) Runway to the jack ladder. The runway from the pond or unloading dock to the table shall be protected with standard handrails and toeboards. Inclined portions shall have cleats or equivalent nonslip surfacing, in accordance with Subdivision D, Walking-Working Surfaces. Protective equipment shall be provided for persons working over water.

(e) Guards below table. Where not protected by the frame of the machine, the underside of the slasher saws shall be enclosed with guards.

(f) Conveyors. The requirements of section (4)(q) of this rule shall apply.

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(g) Circular saws (not slasher saws). Saws shall be provided with standard guards, in accordance with American National Standard ANSI O1.1-1992.

(h) Fixed chain saws, circular cut-off saws, drag and swing saws.

(A) Saws shall be so arranged that they will not project into any passageway when in an idle or working position. When existing conditions do not leave clear passage the saws shall be fenced off in order to make it impossible for anyone to walk into them.

(B) Drag saws and fixed chain saws shall be equipped with a device that will safely lock them in an "UP" position.

(C) All persons shall be in the clear before starting operations of a drag, chain, or swing saw.

(D) Log decks shall be equipped with a device to hold the material stable while being cut.

(i) Barker feed. Each barker shall be equipped with a feed and turnover device which will make it unnecessary for the operator to hold a bolt or log by hand during the barking operation. Eye, ear, and head protection shall be provided for the operator, in accordance with section (3)(c) of this rule.

(j) Guards. A guard shall be installed around barkers to confine flying particles, in accordance with ANSI/ASME B15.1-1992.

(k) Stops. All control devices shall be locked out and tagged when knives are being changed.

(l) Speed governor. Water wheels, when directly connected to barker disks or grinders, shall be provided with speed governors, if operated with gate wide open.

(m) Continuous barking drums.

(A) When platforms or floors allow access to the sides of the drums, a standard railing shall be constructed around the drums. When two or more drums are arranged side by side, proper walkways with standard handrails shall be provided between each set, in accordance with section (3)(d) of this rule.

(B) Sprockets and chains, gears, and trunnions shall have standard guards, in accordance with section (3)(a) of this rule.

(C) Whenever it becomes necessary for a worker to go within a drum, the driving mechanism shall be locked and tagged, at the main disconnect switch, in accordance with section (3)(e) of this rule.

(D) This subsection (m) also applies to barking drums employed in the yard.

(n) Intermittent barking drums. In addition to motor switch, clutch, belt shifter, or other power disconnecting device, intermittent barking drums shall be equipped with a device which may be locked to prevent the drum from moving while it is being emptied or filled.

(o) Hydraulic barkers.

(A) Hydraulic barkers shall be enclosed with strong baffles at the inlet and the outlet. The operator shall be protected by at least five-ply laminated glass.

(B) The high pressure hoses of hydraulic barkers shall be secured in such a manner that the hose connection ends will be restrained if a hose connection fails.

(p) Splitter block. The block upon or against which the wood is rested shall have a corrugated surface or other means provided that the wood will not slip. Wood to be split, and also the splitting block, shall be free of ice, snow, or chips. The operator shall be provided with eye and foot protection. A clear and unobstructed view shall be maintained between equipment and workers around the block and the workers' help area.

(q) Power control. Power for the operation of the splitter shall be controlled by a clutch or equivalent device.

(r) Knot cleaners. The operators of knot cleaners of the woodpecker type shall wear eye protection equipment.

(s) Chipper spout. The feed system to the chipper spout shall be arranged in such a way that the operator does not stand in a direct line with the chipper spout. All chipper spouts shall be enclosed to a height of at least 42 inches from the floor or operator's platform. When other protection is not sufficient, the operator shall be protected from falling into the chipper by the use of a safety belt and lanyard. Ear protection equipment shall be worn by the operator and others in the immediate area if there is any possibility that the noise level may be harmful (see §1910.95, Occupational Noise Exposure, in Subdivision G).

(t) Feeding material/clearing jams in machines. Appropriate safety belts and lanyards and face protection shall be used by employees who manually feed material or clear jams in machines unless other provisions are made which will protect the employees.

(u) Carriers for knives. Carriers shall be provided and used for transportation of knives.

(7) Rag and Old Paper Preparation.

(a) Ripping and trimming tools.

(A) Hand knives and scissors shall have blunt points, shall be fastened to the table with chain or thong, and shall not be carried on the person but placed safely in racks or sheaths when not in use.

(B) Hand knives and sharpening steels shall be provided with guards at the junction of the handle and the blade. Utility knives with blade exposure of 2-1/2 inches or less are exempted from this requirement.

(b) Shredders, cutters, and dusters.

(A) Rotating heads or cylinders shall be completely enclosed except for an opening at the feed side sufficient to permit only the entry of stock. The enclosure shall extend over the top of the feed rolls. It shall be constructed either of solid material or with mesh or openings not exceeding 1/2-inch and substantial enough to contain flying particles and prevent accidental contact with moving parts. The enclosure shall be bolted or locked into place.

(B) A smooth-pivoted idler roll resting on the stock or feed table shall be provided in front of feed rolls except when arrangements prevent the operator from standing closer than 36 inches to any part of the feed rolls.

(C) Any manually fed cutter, shredder, or duster shall be provided with an idler roll as per section (7)(b)(B) of this rule or the operator shall use special hand-feeding tools.

(D) Hoods of cutters, shredders, and dusters shall have exhaust ventilation, in accordance with §1910.94, Ventilation, in Subdivision G.

(c) Blowers.

(A) Blowers used for transporting rags shall be provided with feed hoppers having outer edges located not less than 48 inches from the fan.

(B) The arrangement of the blower discharge outlets and work areas shall be such as to prevent material from falling on workers.

(d) Conveyors. Conveyors and conveyor drive belts and pulleys shall be fully enclosed or, if open and within 7 feet of the floor, shall be constructed and guarded in accordance with section (4)(q) of this rule, and Subdivision N, Material Handling and Storage.

(e) Guarding requirements.

(A) Traveling sections of conveyors and other equipment with wheels which run on rails or guides shall be guarded by sweep guards, installed in front of the traveling wheels in all areas where workers may be exposed to contact. Sweep guards shall have not greater than 1/4 inch clearance above the rail or guide.

(B) When using mechanical equipment to elevate the front end of the chip containers for dumping into a hopper, the shear area between the floor and the elevated section shall be safeguarded.

(f) Dust. Measures for the control of dust shall be provided, in accordance with American National Standard ANSI/NFPA 91-1992 and Subdivision I, Personal Protective Equipment.

(g) Rag cookers.

(A) When cleaning, inspection, or other work requires that persons enter rag cookers, all steam and water valves, or other control devices, shall be locked and tagged in the closed or "off" position. Blank flanging of pipelines is acceptable in place of closed and locked valves.

(B) When cleaning, inspection, or other work requires that persons must enter the cooker, one person shall be stationed outside in a position to observe and assist in case of emergency, in accordance with section (3)(f) of this rule.

(C) Rag cookers shall be provided with safety valves in accordance with the ASME Boiler and Pressure Vessel Code, Section VIII, Unfired Pressure Vessels - 1992.

(8) Chemical Processes of Making Pulp.

(a) Industrial kiln guns and ammunition. Management shall develop written instructions, including safety procedures, for storing and operating industrial kiln guns and ammunition. All persons working with this equipment shall be instructed in these procedures and shall follow them.

(b) Sulfur burners.

(A) Sulfur-burner houses shall be safely and adequately ventilated, and every precaution shall be taken to guard against dust explosion hazards and fires, in accordance with American National Standard Z9.2-1979 (R1991), and NFPA 655-1993.

(B) Nonsparking tools and equipment shall be used in handling dry sulfur.

(C) Sulfur storage bins shall be kept free of sulfur dust accumulation, in accordance with American National Standard ANSI Z9.2-1979 (R1991).

(D) Electric equipment shall be of the explosion-proof type, in accordance with the requirements of Subdivision S, Electrical.

(E) Sulfur-melting equipment shall not be located in the burner room.

(c) Protection for employees (acid plants).

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(A) Gas masks, fitted with canisters containing absorbents for the particular acids, gases, or mists involved, shall be provided for employees of the acid department.

(B) Supplied air respirators shall be strategically located for emergency and rescue use.

(C) During inspection, repairs, or maintenance of acid towers, the worker shall be provided with eye protection, a supplied air respirator, a safety belt, and an attached lifeline. The line shall be extended to an attendant stationed outside the tower opening.

(d) Acid tower structure. Outside elevators shall be inspected daily during winter months when ice materially affects safety. Elevators, runways, stairs, etc., for the acid tower shall be inspected monthly for defects that may occur because of exposure to acid or corrosive gases.

(e) Tanks (acid). Entering acid tanks shall be in accordance with 437-002-0146 Confined Spaces, in Subdivision J.

(f) Clothing. Where lime slaking takes place, employees shall be provided with rubber boots, rubber gloves, protective aprons, and eye protection. A deluge shower and eye fountain shall be provided to flush the skin and eyes to counteract lime or acid burns.

(g) Lead burning. When lead burning is being done within tanks, fresh air shall be forced into the tanks so that fresh air will reach the face of the worker first and the direction of the current will never be from the source of the fumes toward the face of the workers. Supplied air respirators (constant-flow type) shall be provided.

NOTE: (For specifics refer to Subdivision Q, Welding, Cutting and Brazing; and §1910.1025, Lead, in Subdivision Z.)

(h) Hoops for acid storage tanks. Hoops of tanks shall be made of rods rather than flat strips and shall be safely maintained by scheduled inspections.

(i) Quicklime stoppages. Water shall not be used to unplug quicklime stops or plugs in pipes or confined spaces.

(j) Digester building exits. At least one unobstructed exit at each end of the room shall be provided on each floor of a digester building.

(k) Digester building escape respirators. Escape respirators shall be available for escape purposes only. These respirators shall meet the requirements of §1910.134 in Subdivision I, including the requirement to be inspected at frequent intervals, not to exceed one month.

(l) Elevators.

(A) Elevators shall be constructed in accordance with American National Standard A17.1-1990.

(B) Elevators shall be equipped with escape respirators for the maximum number of passengers.

(C) Elevators shall be equipped with an alarm system to advise of failure.

(m) Blowoff valves and piping.

(A) The blowoff valve of a digester shall be arranged so as to be operated from another room, remote from safety valves.

(B) All fasteners used to secure digester piping shall conform to ANSI/ASME B31.1-1992.

(C) Digester blow valves shall be pinned or locked in closed position throughout the entire cooking period. This rule applies only to manually operated valves in batch digestors.

(n) Blow lines.

(A) When blow lines from more than one digester lead into one pipe, the cock or valve of the blow line from the tank being inspected or repaired shall be locked and tagged out, or the line shall be disconnected and blocked off.

(B) Test holes in piping systems. Test holes in blow lines of piping systems shall not be covered with insulation or other materials.

(o) Inspection and repair of tanks. All piping leading to tanks shall be blanked off or valved and locked in accordance with §1910.147, Lockout/Tagout, in Subdivision J.

(p) Blow pits and blow tanks.

(A) Blow-pit openings shall be preferably on the side of the pit instead of on top. When located on top, openings shall be as small as possible and shall be provided with railings, in accordance with Subdivision D, Walking-Working Surfaces.

(B) Entrance into blow pits must be done in accordance with 437-002-0146, Subdivision J.

(C) A signaling device shall be installed in the digester and blow-pit rooms and chip bins to be operated as a warning before and while digesters are being blown.

(D) Blow-pit hoops shall be maintained in a safe condition.

(q) Blowing batch digester.

(A) Blowoff valves shall be opened slowly.

(B) After the digester has started to be blown, the blowoff valve shall be left open, and the hand plate shall not be removed until the digester cook signals the blowpit person that the blow is completed. Whenever it becomes necessary to remove the hand plate to clear stock, operators shall wear eye protection equipment and protective clothing to guard against burns from hot stock.

(C) Means shall be provided whereby the digester cook shall signal the person in the chip bin before starting to load the digester.

(r) Inspecting and repairing digester.

(A) Valves controlling lines leading into a digester shall be locked out and tagged in accordance with §1910.147, Lockout/Tagout, in Subdivision J.

(B) Sources of energy associated with a digester shall be isolated in accordance with §1910.147, Lockout/Tagout, in Subdivision J.

(C) Entry into the digester shall be in accordance with 437-002-0146 Confined Spaces, in Subdivision J.

(D) The concentration of lead in the air shall not exceed the limits specified in §1910.1025, Lead, Subdivision Z.

(E) All employees entering digesters for inspection or repair work shall be provided with protective headgear.

(F) Eye protection and dust respirators shall be provided to workers while the old brick lining is being removed, in accordance with Subdivision I, Personal Protective Equipment.

(G) Sanitary facilities shall be provided as specified in §1910.141, Sanitation, in Subdivision J.

(s) Pressure tanks-accumulators (acid).

(A) Safety regulations governing inspection and repairing of pressure tanks-accumulators (acid) shall be the same as those specified in section (8)(t) of this rule.

(B) The pressure tanks-accumulators shall be inspected twice annually and more frequently if required by the manufacturer or engineer's recommendations. (Refer to Boiler and Pressure Vessel Safety Laws of the State Building Codes Division, Department of Consumer and Business Services.)

(t) Pressure vessels (safety devices).

(A) Each unfired pressure vessel shall have a pressure relieving device or devices installed and operated in accordance with ASME Boiler and Pressure Vessel Code, Section VIII (Unfired Pressure Vessels – 1992). In the case of batch digesters with safety pressure relieving devices installed directly to the pressure vessel, means shall be devised to verify regularly that the safety devices have not become plugged or corroded to the point of being inoperative.

(B) All safety devices shall conform to Paragraph U-2 in the ASME Boiler and Pressure Vessel Code, Section VIII, Unfired Pressure Vessels – 1992.

(u) Miscellaneous. Insofar as the processes of the sulfate and soda operations are similar to those of the sulfite processes, sections (8)(a) through (t) of this rule shall apply.

(A) Quick operating showers, bubblers, etc., shall be available for emergency use in case of caustic soda burns.

(B) Rotary tenders, smelter operators, and those cleaning smelt spouts shall be provided with eye protection equipment (fitted with lenses that filter out the harmful rays emanating from the light source) when actively engaged in their duties, in accordance with OAR 437-002-0134, in Subdivision I.

(C) Piping, valves and fittings between the digester, blowpit, and blow tanks shall be in accordance with ANSI/ASME B31.1-1992. These shall be inspected at least semi-annually to determine the degree of deterioration and repaired or replaced when necessary, in accordance with American National Standards ANSI/ASME B31.1-1992.

(v) Welding. Welding on blow tanks, accumulator tanks, or any other vessels where turpentine vapor or other combustible vapor could gather shall be done only after the vessel has been completely purged of fumes. Fresh air shall be supplied workers inside of vessels.

NOTE: See Subdivision Q, Welding, Cutting and Brazing, for additional welding requirements.

(w) Turpentine systems and storage tanks. Nonsparking tools and ground hose shall be used when pumping out the tank. The tank shall be surrounded by a berm or moat.

(x) Recovery furnace area.

(A) An audible warning system shall be installed in kraft and soda base sulfite recovery furnace areas and shall be activated whenever an emergency exists.

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(B) All personnel working in recovery furnace areas shall be instructed on procedures to be followed when emergency warning systems are activated.

(C) Emergency warning systems in the recovery furnace areas shall be kept in proper working condition and shall be tested or checked weekly.

(D) Workers shall stand to the side while opening a furnace or boiler firebox door.

(E) Smelt-dissolving tanks shall be covered and the cover kept closed, except when samples are being taken.

(F) Smelt tanks shall be provided with vent stacks and explosion doors, in accordance with American National Standard ANSI/UL 641-1985.

(G) An emergency shutdown procedure as currently recommended by the boiler manufacturer shall be implemented and used when an emergency shutdown is required. Both normal and emergency shutdown procedures shall be posted.

(H) Recovery furnaces and power boilers are to be constructed, maintained, and serviced as required by the State Building Codes Division of the Department of Consumer and Business Services.

(I) Open pipes shall not be used as punch bars if the use would create a hazard.

(J) Furnace room. Exhaust ventilation shall be provided where niter cake is fed into a rotary furnace and shall be so designed and maintained as to keep the concentration of hydrogen sulfide gas below the limits listed in OAR 437-002-0382, Oregon Rules for Air Contaminants, in Subdivision Z.

(9) Bleaching.

(a) Bleaching containers. Bleaching containers, such as cells, towers (bleaching engines), etc., except the Bellmer type, shall be completely covered on the top, with the exception of one small opening large enough to allow filling but too small to admit a person. Platforms leading from one engine to another shall have standard guardrails, in accordance with Subdivision D, Walking-Working Surfaces.

(b) Bleach plant alarm system. An audible alarm system shall be installed and it shall be activated whenever a serious leak or break develops in the bleach plant area which creates a health or fire hazard.

(c) Bleach mixing rooms.

(A) Areas where dry bleach powder is mixed shall be provided with adequate exhaust ventilation, located at the floor level, in accordance with ANSI/UL 641-1985.

(B) Respiratory protection shall be provided for emergency use, in accordance with American National Standards ANSI/NFPA 1404-1989, and Z88.2-1980. Respiratory protection must conform to the requirements of §1910.134 of Subdivision I.

(C) For emergency and rescue work, self-contained air masks or supplied air equipment shall be provided in accordance with American National Standards Z88.2-1980. Respiratory protection must conform to the requirements of §1910.134 of Subdivision I.

(d) Liquid chlorine.

(A) Tanks of liquid chlorine shall be stored in an adequately ventilated unoccupied room, where their possible leakage cannot affect workers.

(B) Gas masks capable of absorbing chlorine shall be supplied, conveniently placed, and regularly inspected, and workers who may be exposed to chlorine gas shall be instructed in their use.

(C) For emergency and rescue work, independent self-contained breathing apparatus or supplied air equipment shall be provided.

(D) At least two exits, remote from each other, shall be provided for all rooms in which chlorine is stored.

(E) Spur tracks upon which tank cars containing chlorine and caustic are spotted and connected to pipelines shall be protected by means of a derail in front of the cars.

(F) All chlorine, caustic, and acid lines shall be marked for positive identification, in accordance with American National Standard A13.1-1981 (R 1985).

(e) Handling chlorine dioxide.

(A) Chlorine dioxide generating and storage facilities shall be placed in areas which are adequately ventilated and are easily kept clean of wood, paper, pulp, etc., to avoid contamination which might cause a reaction. This can be accomplished by placing these facilities in a separate room or in a designated outside space.

(B) Safety showers and/or jump tanks and eyewash fountains shall be provided for persons working around sodium chlorate and the other hazardous chemicals involved in this process.

(C) Water hoses for flushing spills shall be adequate in size and located where needed.

(D) The generating area shall have signs in accordance with Subdivision J, General Environmental Controls, warning of the hazard and restricting entrance to authorized personnel only.

(E) Facilities handling sodium chlorate and chlorine dioxide shall be declared "No Smoking" areas and shall have signs posted accordingly.

(F) All equipment involved in the chlorine dioxide process where pressure may be generated shall be provided with adequate pressure relief devices.

(G) Respiratory protective equipment approved for use in exposures to chlorine and chlorine dioxide gases shall be provided.

(H) Management shall be responsible for developing written instructions including safety procedures for operating and maintaining the generator and associated equipment. All personnel working on this equipment shall be thoroughly trained in these procedures and shall follow them.

(I) Only authorized personnel shall be allowed in close proximity to the chlorine dioxide generating equipment.

(J) When reasonably possible, the sample station should be located on the outside of the generating room. Goggles must be worn when taking samples.

(K) Welding or burning shall not be performed on the generator system while it is operating. Immediately before maintenance can be performed on the inside of any of this equipment, it shall be thoroughly flushed with water and purged of hazardous gases.

(L) Chlorine and chlorine dioxide gas shall be carried away from the work place and breathing area by an exhaust system. The gas shall be rendered neutral or harmless before being discharged into the atmosphere. The requirements of American National Standard Z9.2-1979 (R1991) shall apply to this subdivision.

(f) Handling sodium chlorate.

(A) Workers handling and working with sodium chlorate shall be thoroughly trained in precautions to be used in handling and special work habits.

(B) Workers exposed to direct contact with sodium chlorate shall wear appropriate personal protective equipment.

(C) Facilities for storage and handling of sodium chlorate shall be constructed so as to eliminate possible contact of dry or evaporated sodium chlorate with wood or other material which could cause a fire or explosion.

(D) Chlorine gas shall be carried away from the work place and breathing area by an exhaust system. The gas shall be rendered neutral or harmless before being discharged into the atmosphere. The requirements of American National Standard Z9.2-1979 (R1991) shall apply to this subdivision.

(E) Sodium chlorate facilities shall be constructed with a minimum of packing glands, stuffing boxes, etc.

(g) Bagged or drummed chemicals. Bagged or drummed chemicals require efficient handling to prevent damage and spillage. Certain oxidizing chemicals used in bleaching pulp and also in some sanitizing work require added precautions for safety in storage and handling. In storage, these chemicals shall be isolated from combustible materials and other chemicals with which they will react such as acids. They shall also be kept dry, clean and uncontaminated.

(10) Mechanical Pulp Process.

(a) Pulp grinders.

(A) Water wheels directly connected to pulp grinders shall be provided with speed governors limiting the peripheral speed of the grinder to that recommended by the manufacturer.

(B) Doors of pocket grinders shall be arranged so as to keep them from closing accidentally.

(b) Butting saws. Hood guards shall be provided on butting saws, in accordance with American National Standard ANSI O1.1-1992.

(c) Floors and platforms. The requirements of section (3)(d) of this rule shall apply.

(d) Personal protection. Persons exposed to falling material shall wear eye, head, foot, and shin protection equipment, in accordance with Subdivision I, Personal Protective Equipment.

(11) Stock Preparation.

(a) Pulp shredders.

(A) Cutting heads shall be completely enclosed except for an opening at the feed side sufficient to permit only entry of stock. The enclosure shall be bolted or locked in place. The enclosure shall be of solid material or with mesh or other openings not exceeding 1/2-inch.

(B) Either a slanting feed table with its outer edge not less than 36 inches from the cutting head or an automatic feeding device shall be provided.

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(C) Repairs for cleaning of blockage shall be done only when the shredder is shutdown and control devices locked.

(D) All power-driven mechanisms shall be guarded in accordance with section (3)(a) of this rule.

(b) Pulp conveyors. Pulp conveyors and conveyor drive belts and pulleys shall be fully enclosed, or if open and within 7 feet of the floor, shall be constructed and guarded in accordance with Subdivision N, Material Handling and Storage, and Subdivision O, Machinery and Machine Guarding.

(c) Floors, steps, and platforms. The requirements of section (3)(d) of this rule shall apply.

(d) Beaters.

(A) Beater rolls shall be provided with covers.

(B) Guardrails 42 inches high shall be provided around beaters where tub tops are less than 42 inches from the floor, in accordance with section (3)(d) of this rule and Subdivision D, Walking-Working Surfaces.

(C) When cleaning, inspecting, or other work requires that persons enter the beaters, all control devices shall be locked and tagged out, in accordance with §1910.147, Lockout, in Subdivision J.

(D) When beaters are fed from the floor above, the chute opening, if less than 42 inches from the floor, shall be provided with a complete rail or other enclosure. Openings for manual feeding shall be sufficient only for entry of stock and shall be provided with at least two permanently secured crossrails, in accordance with Subdivision D, Walking-Working Surfaces.

(E) Floors around beaters shall be provided with sufficient drainage to remove wastes.

(e) Pulpers.

(A) All pulpers having the top or any other opening of the vessel less than 42 inches from the floor or work platform shall have such openings guarded by railed or other enclosures. For manual charging, openings shall be sufficient only to permit the entry of stock and shall be provided with at least two permanently secured crossrails, in accordance with Subdivision D.

(B) When cleaning, inspecting or other work requires persons to enter the pulpers it shall be in accordance with 437-002-0146 Confined Spaces, in Subdivision J. All power mechanisms shall be guarded as required in Subdivision O, Machinery and Machine Guarding.

(C) Cleaning or inspecting pulpers or other work, including work above the pulper in a dangerous position, shall be in accordance with §1910.147, Lockout, in Subdivision J.

(D) All power mechanisms shall be guarded in accordance with Subdivision O, Machinery and Machine Guarding.

(f) Pulping devices. Emergency stop controls shall be provided at the feed point when pulping devices are fed manually from the floor above.

(g) Guillotine-type roll splitters. Rolls shall be centered and in a horizontal position directly below the guillotine-type blade while being split. No part of the body shall be under the guillotine-type blade.

(h) Stock chests and tanks.

(A) All control devices shall be locked when persons enter stock chests, in accordance with §1910.147, Lockout/Tagout, in Subdivision J.

(B) All power mechanisms shall be guarded in accordance with Subdivision O, Machinery and Machine Guarding.

(C) When cleaning, inspecting, or other work requires that persons enter stock chests, they shall be provided with a low-voltage extension light.

(12) Machine Room.

(a) Controls and safety devices.

(A) Electrically or manually operated power disconnecting devices for all power-operated equipment shall be provided within easy reach of the operator while in his or her normal operating position. If necessary for safety of the operation, the machine shall be so equipped that retarding or braking action can be applied at the time of or after the source of power is deactivated.

(B) Pulp and paper machines shall be equipped with stopping devices. The devices shall be located where they can be used readily to stop the machines or sections of the machine. Power disconnect devices and retarding or braking controls provided for in section (12)(a)(A) of this rule are required for the safe operation of a pulp and paper machine.

(C) Brakes, back stops, antirunaway devices, overload releases, and other safety devices shall be inspected and tested frequently to insure that all are operative and maintained in good repair.

(D) An audible alarm shall be sounded prior to starting up any section of a pulp or paper machine. Sufficient time shall be allowed between activation of the alarm system and start-up of the equipment to allow any persons to clear the hazardous area.

(E) In starting up a dryer section, dryers shall be preheated and steam for heating the drums shall be introduced slowly, while the drums are revolving.

(F) Employees shall not attempt to remove a broken carrier rope from a dryer while the section is running at operating speed.

(G) Employees shall not feed a stack with any hand-held device which is capable of going through the nip.

(H) Employees shall stop dryer to remove a wrap except in cases where it can be safely removed by using air or other safe means.

(I) Special protective gloves shall be provided and shall be worn by employees when filing or handling sharp-edged doctor blades.

(J) Employees shall not place their hands between the sharp edge of an unloaded doctor blade and the roll while cleaning the doctor blade.

(K) The crane operator shall ascertain that reels are properly seated at winder stand or at reel arms before he or she disengages the hooks.

(L) Shaftless winders shall be provided with a barrier guard of sufficient strength and size to confine the rolls in the event they become dislodged while running.

(M) Employees shall keep clear of hazardous areas around the lowerator, especially all lowerator openings in a floor and where roll is being discharged.

(N) If a powered roll ejector is used it should be interlocked to prevent accidental actuation until the receiving platform or roll lowering table is in position to receive the roll.

(O) Provision shall be made to hold the rider roll when in a raised position unless counterbalancing eliminates the hazard.

(b) Drives.

(A) All drives, pulleys, couplings, and shafts on equipment requiring service while operating shall have standard guards in accordance with section (3)(a) of this rule.

(B) All drives shall be provided with lockout devices at the power switch which interrupts the flow of current to the unit.

(C) All ends of rotating shafts including dryer drum shafts shall be completely guarded.

(D) All accessible disengaged doctor blades should be covered.

(E) All exposed shafts shall be guarded. Crossovers shall be provided.

(F) Oil cups and grease fittings shall be placed in a safe area remote from nip and heat hazards.

(c) Protective equipment. Face shields, aprons and rubber gloves shall be provided for workers handling acids in accordance with sections (3)(c) and (5)(a) of this rule.

(d) Walkways. Steps and footwalks along the fourdrinier and press section shall have nonslip surfacing and be complete with standard handrails, when practical, in accordance with Subdivision D, Walking-Working Surfaces.

(e) Steps. Steps of uniform rise and tread with nonslip surfaces shall be provided at each press in accordance with Subdivision D, Walking-Working Surfaces.

(f) Plank walkways. A removable plank shall be provided along each press, with standard guardrails installed. The planks shall have nonslip surfaces in accordance with Subdivision D, Walking-Working Surfaces.

(g) Dryer lubrication. If a gear bearing must be oiled while the machine is in operation, an automatic oiling device to protect the oiler shall be provided, or oil cups and grease fittings shall be placed along the walkways out of reach of hot pipes and dryer gears.

(h) Levers. All levers carrying weights shall be constructed so that weights will not slip or fall off.

(i) First dryer. Either a permanent guardrail or apron guard or both shall be installed in front of the first dryer in each section in accordance with Subdivision O, Machinery and Machine Guarding.

(j) Steam and hot-water pipes. All exposed steam and hot-water pipes within 7 feet of the floor or working platform or within 15 inches measured horizontally from stairways, ramps, or fixed ladders shall be covered with an insulating material, or guarded in such manner as to prevent contact.

(k) Dryer gears. Dryer gears shall be guarded except where the oilers' walkway is removed out of reach of the gears' nips and spokes and hot pipes in accordance with Subdivision O, Machinery and Machine Guarding.

(l) Broke hole.

(A) A guardrail shall be provided at broke holes in accordance with Subdivision D, Walking-Working Surfaces.

(B) Where pulpers are located directly below the broke hole on a paper machine and where the broke hole opening is large enough to permit a worker to fall through, any employee pushing broke down the hole shall

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wear a safety belt and lanyard. The lanyard shall be fastened in such a manner that it is impossible for the person to fall into the pulper.

(C) An alarm bell or a flashing light shall be actuated before dropping material through the broke hole.

(m) Feeder belt. A feeder belt or other effective device shall be provided for starting paper through the calender stack.

(n) Steps. Steps or ladders of uniform rise and tread with nonslip surfaces shall be provided at each calender stack. Handrails and hand grips shall be provided at each calender stack in accordance with Subdivision D, Walking-Working Surfaces.

(o) Grounding. All calender stacks and spreader bars shall be grounded in accordance with Subdivision S, Electrical, as protection against shock induced by static electricity.

(p) Sole plates. All exposed sole plates between dryers, calenders, reels, and rewinders shall have a nonskid surface.

(q) Nip points. The hazard of the nip points on all calender rolls shall be eliminated or minimized by means of an effective barrier device, or by feeding the paper into the rolls by means of a rope carrier, air jets, or hand feeding devices.

(r) Scrapers. Alloy steel scrapers with pullthrough blades approximately 3 by 5 inches in size shall be used to remove "scabs" from calender rolls.

(s) Illumination. Permanent lighting shall be installed in all areas where employees are required to make machine adjustments and sheet transfers in accordance with American National Standard ANSI/IES RP-1990.

(t) Control panels. All control panel handles and buttons shall be protected from accidental contact.

(u) Lifting reels.

(A) The reels shall stop rotating before being lifted from bearings.

(B) All lifting equipment (clamps, cables, and slings) shall be maintained in a safe condition and inspected regularly.

(C) Reel shafts with square block ends shall be guarded.

(v) Feeder belts. Feeder belts, carrier ropes, air carriage, or other equally effective means shall be provided for starting paper into the nip or drum-type reels.

(w) In-running nip.

(A) Where the nipping points of all drum winders and rewinders is on the operator's side, it shall be guarded by barrier guards interlocked with the drive mechanism.

(B) A zero speed switch or locking device shall be installed to prevent the guard from being raised, lowered, or removed while the roll is turning.

(x) Core collars. Set screws for securing core collars to winding and unwinding shafts shall not protrude above the face of the collar. All edges of the collar with which an operator's hand comes in contact shall be beveled to remove all sharp corners.

(y) Slitter knives. Slitter knives shall be guarded so as to prevent accidental contact. Carriers shall be provided and used for transportation of slitter knives.

(z) Winder shaft. The winder shall have a guide rail to align the shaft for easy entrance into the opened rewind shaft bearing housings.

(aa) Handling rolls, winders and core shafts. Mechanical handling equipment shall be provided for handling rolls, winder shafts, and core shafts that are too heavy for safe manual handling based on the NIOSH Work Practice Guide for Manual Lifting – 1981.

(bb) Winder area. A nonskid surface shall be provided in front of the winder to prevent accidental slipping.

(cc) Radiation. Special standards regarding the use of radiation equipment shall be posted and followed as required by §1910.1096, Ionizing Radiation, in Subdivision Z.

(13) Finishing Room.

(a) Cleaning rolls. Rolls shall be cleaned only on the outrunning side.

(b) Emergency stops. Electrically or manually operated quick power disconnecting devices, interlocked with braking action, shall be provided on all operating sides of the machine within easy reach of all employees. These devices shall be tested by making use of them when stopping the machine.

(c) Core collars. The requirements of section (12)(x) of this rule, and the requirements in Subdivision O, Machinery and Machine Guarding, shall apply.

(d) Elevators. These shall be in accordance with American National Standard ANSI/ASME A17.1-1990.

(e) Control panels. The requirements of section (12)(t) of this rule shall apply.

(f) Guillotine-type cutters.

(A) Each guillotine-type cutter shall be equipped with a control which requires the operator and helper, if any, to use both hands to engage the clutch when operated from within reach of blade.

(B) Each guillotine-type cutter shall be equipped with a nonrepeat device.

(C) Carriers shall be provided and used for transportation of guillotine-type cutter knives.

(g) Rotary cutter.

(A) On single-knife machines a guard shall be provided at a point of contact to the knife.

(B) On duplex cutters the protection required for single-knife machines shall be provided for the first knife, and a hood shall be provided for the second knife.

(C) Safe access shall be provided to the knives of a rotary cutter by means of catwalks with nonslip surfaces, railings, and toeboards in accordance with Subdivision D, Walking-Working Surfaces.

(D) A guard shall be provided for the spreader or squeeze roll at the nip side on sheet cutters.

(E) Electrically or manually operated quick power disconnecting devices with adequate braking action shall be provided on all operating sides of the machine within easy reach of all operators.

(F) The outside slitters shall be guarded.

(h) Platers.

(A) A guard shall be arranged across the face of the rolls to serve as a warning that the operator's hand is approaching the danger zone.

(B) A quick power disconnecting device shall be installed on each machine within easy reach of the operator.

(i) Finishing room rewinders.

(A) The nipping points of all drum winders and rewinders located on the operator's side shall be guarded by either automatic or manually operated barrier guards of sufficient height to protect fully anyone working around them. The barrier guard shall be interlocked with the drive mechanism to prevent operating above jog speed without the guard in place. A zero speed switch should be installed to prevent the guard from being raised while the roll is turning.

(B) A nonskid surface shall be provided in front of the rewriter to prevent an employee from slipping in accordance with section (3)(d) of this rule.

(C) Mechanical lifting devices shall be provided for placing and removing rolls from the machine.

(j) Control panels. The requirements of section (12)(t) of this rule shall apply.

(k) Roll-type embosser. The nipping point located on the operator's side shall be guarded by either automatic or manually operated barrier guards interlocked with the drive.

(l) Converting machines.

(A) When using a crane or hoist to place rolls into a backstand and the operator cannot see both ends of the backstand, appropriate means will be implemented to eliminate hazards involved. The operator shall ascertain that rolls are properly seated at winder stand or at roll arms before he or she disengages the hooks.

(B) All power closing sections shall be equipped with an audible warning system which will be activated when closing the sections.

(C) Slitters, slotters, and scorers not in use shall be properly stored so as not to create a hazard.

(D) Mechanical handling equipment shall be provided for handling rolls or devices that are too heavy for safe manual handling based on the NIOSH Work Practice Guide for Manual Lifting – 1981.

(E) Shear and pinch points. Shear and pinch points at the feed mechanism shall be color-coded orange and/or identified by signs in accordance with Subdivision J, General Environmental Controls.

(m) Sorting and counting tables.

(A) Tables shall be smooth and free from splinters, with edges and corners rounded.

(B) Paddles shall be smooth and free from splinters.

(n) Roll splitters. The nip point and cutter knife shall be guarded by either automatic or manually operated barrier guards.

(o) Corrugators.

(A) Rails of rail-mounted devices such as roll stands shall be flush with the adjacent floor, and so installed to provide a minimum of 18 inches clearance between the equipment and walls or other fixed objects.

(B) All corrugating and pressure rolls shall be equipped with appropriately designed and installed threading guides so as to prevent contact with the infeed nip of the various rolls by the operator.

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(C) Lower elevating conveyor belt rolls on the single facer bridge shall have a minimum nip clearance of 4 inches.

(D) Web shears at the discharge end of the double facer shall be equipped with barrier-type guards.

(E) Slitter stations not in use shall be disconnected from the power source by positive means.

(F) The adhesive system shall be so designed and installed as to keep fumes and airborne dust within limits in accordance with OAR 437-002-0382, Oregon Rules for Air Contaminants, in Subdivision Z.

(14) Materials Handling.

(a) Hand trucks. No person shall be permitted to ride on a powered hand truck unless it is so designed by the manufacturer. A limit switch shall be on operating handle – 30° each way from a 45° angle up and down.

(b) Power trucks. Power trucks shall comply with Subdivision N, Material Handling and Storage. Adequate ventilation shall be provided and the trucks properly maintained, so that dangerous concentrations of carbon monoxide cannot be generated, especially in warehouses or other isolated areas of a plant.

(c) Carton-stitching machine. The carton-stitching machine shall be guarded to prevent the operator from coming in contact with the stitching head.

(d) Banding of skids, cartons, cases, etc. Banders and helpers shall wear eye protection equipment in accordance with section (3)(c) of this rule.

(e) Unloading cars or trucks.

(A) Loading and unloading materials. Platforms with ladders or stairways shall be installed or alternative methods made available when needed so that workers may safely gain access to and perform work on the top of rail cars or trucks when ladders are not installed on such equipment.

(B) Where steel bands or wires are used in boxcars or trucks, all loaders and helpers shall wear eye protection in accordance with Subdivision I, Personal Protective Equipment.

(C) The construction and use of bridge or dock plates shall conform to the requirements of American National Standard B56.1-1988.

(D) Flag signals, derails, or other protective devices shall be used to protect workers during switching operations. The blue flag policy shall be invoked according to section (4)(j) of this rule.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 7-1994, f. & cert. ef. 11-4-94; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 2-2001, f. & cert. ef. 2-5-01; OSHA 1-2012, f. & cert. ef. 4-10-12; OSHA 6-2012, f. 9-28-12, cert. ef. 4-1-13; OSHA 7-2013, f. & cert. ef. 12-12-13; OSHA 2-2017, f. 5-16-17, cert. ef. 11-1-17

437-002-0314

Veneer and Plywood Machinery

NOTE: 1910.265(c) and (d) also apply to Veneer and Plywood Machinery. (See OAR 437-002-0313(1).)

(1) Purpose. The purpose of this rule is to prescribe minimum requirements for veneer and plywood operations.

(2) Veneer Lathe.

(a) A mechanical lock shall be provided to prevent the back-up roll from closing until activated by the operator.

(b) A guard or positive interlock and necessary hydraulic or air controls shall be provided to prevent forward movement of the charger, if such movement may be hazardous.

(c) Positive means shall be provided to hold the head in the open position while servicing the knife.

(d) A protective device for the knife edge shall be provided for use when transporting the knife.

(e) Where there is a hazard from “exploding” logs, both lathe operator’s and charger operator’s stations shall be protected against flying slabs and chips.

(f) Means shall be provided in the knife grinding area to drain cleaning or cooling liquids from the work station.

(g) Knives and other cutting equipment shall be stored in planned storage areas.

(h) The area under the elevating ramp (tipple) from the lathe to the stock trays shall be guarded to prevent entrance while the lathe is in operation.

(3) Veneer Slicer. The veneer slicer knife shall be guarded at front and rear to prevent accidental contact with the knife edge.

(4) Veneer Clipper.

(a) Clippers shall be provided with a guard on both infeed and outfeed sides to protect the employees.

(b) Each operating treadle for veneer clippers shall be covered by a device which is adequate to avoid accidental activation or tripping.

(5) Veneer Cutter.

(a) Power-driven guillotine veneer cutters (except continuous feed trimmers) shall be equipped with the following:

(A) A starting device which requires the simultaneous action of both hands to start the cutting motion, and at least one hand on a control during the complete stroke of the knife; or

(B) An automatic device which will remove the hands of the operator from the danger zone at every descent of the blade used in conjunction with one-hand starting devices which require two distinct movements of the device to start the cutting motion.

(b) All power-driven veneer cutters shall be so designed that the knife positively returns to the starting position after each complete cycle of the knife.

(c) Where two or more workers are employed at the same time on the same power-driven guillotine veneer cutter equipped with two-hand control, the device shall be so arranged that each worker shall be required to use both hands shall be required to use both hands simultaneously on the controls to start the cutting motion, and at least one hand on a control to complete the cut.

Note: The controls should be of a type that cannot be defeated by tying down one of them.

(d) In addition to the brake or other stopping mechanism, a nonrepeat device shall be provided which will prevent the machine from operating in the event of a mechanical failure.

(e) Where no other device serves as protection, a guard running the length of the knife shall be installed on the infeed side.

(f) A protective device, such as side shields, shall be provided on the outfeed side.

(g) A protective device for the knife edge shall be provided for use when transporting the knife.

(h) Positive means of opening and locking the control circuit and supporting the mechanism in the “up” position shall be provided for use during knife changes.

(i) When the hold-down clamp and knife are in their uppermost positions, the knife edge shall not extend below the lower edge of the hold-down clamp.

(6) Tray System.

(a) The tray system shall be equipped with controls at each end so that the system cannot be operated unless both switches are in the “on” position.

(b) A walkway shall be constructed the entire length of the trays so that the top tray can be reached in the event of a “plug-up” without having to climb up the frames.

(7) Veneer Dryer.

(a) A standard stairway and catwalk across the tray lines shall be constructed to provide safe access in the event of a “plug-up” and dryer feed controls, including a positive lockout, shall be provided at the feeders’ station.

(b) Steam lines outside the dryer which may be contacted by personnel shall be insulated or enclosed.

(c) Suitable gloves and aprons shall be worn by workers off-bearing veneer from chain or table.

(d) Where a band saw is used to trim panel core, it shall be guarded in accordance with 1910.265(e)(2)(ii)(C).

(8) Hot Press or Veneer Press.

(a) Steam lines which may be contacted by personnel shall be insulated or enclosed.

(b) Standard guardrails shall be provided on the ends of loading and unloading elevators or hoist platforms or both. (See Division 2/D.)

(c) Hot-press hoists shall be provided with a braking and holding mechanism which will operate automatically in case of failure of lifting chains or cables.

(d) On a hot-press equipped with an automatic charger, an electrical interlocked gate or chain shall be provided across the opening between the charger and the press which, when opened, will open the circuit to prevent the charger from moving.

(e) Where two workers are employed in loading the press, closing control devices shall be provided within reach of each work station, so interconnected as to require activation of both controls to operate the press, and a quick opening device shall be provided at each station on the press hoist platform.

(f) Floor openings on non-working sides of press and pit shall be protected with standard guardrails. (See Division 2/D.)

(g) Means shall be provided for safe access into the press pit, the top of the press, and each side, and a positive means of blocking up the hoist platform.

(9) Stripsaw and Patch Machine.

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(a) An antikickback device and hood guard shall be provided on the veneer stripsaw.

(b) The patch machine shall be guarded to prevent operator's hands from entering the punch area, and the foot treadle shall be guarded.

(10) Veneer Chipper and Hogs.

(a) The top feed roll shall be equipped with a guard and a shield or panel shall be provided on the operator's side to prevent operator from reaching the roll.

(b) Chippers and hogs shall be guarded in accordance with 1910.265(c)(20)(i) through (c)(21)(ii)(C). Feed conveyors to chippers and hogs shall be guarded in accordance with OAR 437-002-0313(2).

(11) Electronic Laminating Press and Edge Gluer.

(a) Interlocked gates shall be provided on infeed and outfeed sides of batch-type presses which are interlocked to prevent power being activated until gates are completely lowered.

(b) Shielding shall be provided to protect against harmful exposure to radiation that may be emitted.

(c) All screens and filters shall be equipped with interlocks which will shut off all power in the event they are removed.

(12) Edge Gluer Jointer.

(a) A barrier shall be installed at the end of the travel of the head to prevent flying splinters from injuring personnel.

(b) A gate shall be installed to prevent access between the edge gluer jointer and the grasshopper, so arranged that when the gate is opened, all electricity, air, and hydraulic lines will be shut off and the cylinders bled.

(c) A device should be positioned across the front of the infeed nip point, so arranged as to shut off the equipment if contact is made with it.

(13) Wide Belt Sanders. Wide-belt sanders shall be equipped with non-kickback fingers and a barrier at the infeed side adjusted to prevent more than one panel entering the sander at a time.

Stat. Auth.: ORS 654.025(2) & 656.726(3)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 7-1993, f. 6-8-93, cert. ef. 8-1-93; OSHA 2-2017, f. 5-16-17, cert. ef. 11-1-17

437-002-2021

Additional Oregon Definitions

(1) Scope and application. These definitions apply to Subdivision 2/D. Additional terms in 1910.21(b) also apply to Subdivision 2/D.

(2) Definitions. Low-slope roof means a roof that has a slope less than or equal to a ratio of 2 in 12 (vertical to horizontal).

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 2-2017, f. 5-16-17, cert. ef. 11-1-17

437-002-2022

Additional Oregon Rules for Powered Platforms

(1) Scope and application. This rule applies to powered platforms not regulated by 1910.66 Powered platforms for building maintenance, 1910.67 Vehicle-mounted elevating and rotating work platforms, and 1910.68 Manlifts.

(2) Powered work platforms identified in (2)(a) — (c) of this rule, used in general industry, must meet the requirements of Division 3, Subdivision L Scaffolds.

(a) Manually Propelled Elevating Aerial Platforms covered by the scope of ANSI/SIA A92.3 — 1990.

(b) Scissor lifts — Self-Propelled Elevating Work Platforms covered by the scope of ANSI/SIA A92.6 — 1990.

(c) Boom Supported Elevating Work Platform covered by the scope of ANSI/SIA A92.5 — 1996.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 2-2017, f. 5-16-17, cert. ef. 11-1-17

437-002-2027

Rope Descent & Rope Access Systems

(1) Scope and application. This rule establishes safety requirements for rope descent and rope access. Rope descent and rope access systems can provide a safe way for employees to reach hard-to-reach locations, either natural or man-made. The requirements of this rule include, but are not limited to, the cleaning of buildings or structures, the inspection of dams and spillways, access to interior or exterior structural and architectural components of buildings, highway/bridge inspection and maintenance, power-plant penstocks and other difficult access areas.

(2) Definitions. For the purposes of this rule the following definitions apply:

(a) Access is the means of reaching a workspace of a work area.

(b) Rope access means the use of rope access equipment where two ropes are used; one as the primary means of support and a second for fall

arrest protection. The employee accesses the work area by ascending, descending, or traversing along both ropes by alternating connections and weight between the two ropes. Rope access may also be called industrial rope access but is not limited to industrial applications.

(c) Rope descent system means a suspension system that allows an employee to descend in a controlled manner and, as needed, stop at any point during the descent. A rope descent system usually consists of a roof anchorage, support rope, a descent device, carabiner(s) or shackle(s), and a chair (seatboard). A rope descent system also is called controlled descent equipment or apparatus. Rope descent systems do not include industrial rope access systems.

(3) Personal Protective Equipment. The employer must ensure personal protective equipment is in accordance with Division 2/I when rope descent systems or rope access methods are used.

(4) Anchorages for Rope Descent and Rope Access Systems.

(a) Permanent Anchorages on Buildings.

(A) Before any rope descent or rope access system is used, the building owner must inform the employer, in writing that the building owner has identified, tested, certified, and maintained each permanent anchorage so it is capable of supporting at least 5,000 pounds (22.24kN), in any direction, for each employee attached. The information must be based on an annual inspection by a qualified person and certification of each anchorage by a qualified person, as necessary, and at least every 10 years.

(B) The employer must ensure that no employee uses any permanent anchorage before the employer has obtained written information from the building owner that each anchorage meets the requirements of 437-002-2027(4)(a)(A). The employer must keep the information for the duration of the job.

(C) The requirements of 437-002-2027(4)(a)(A) and (B) must be implemented no later than December 1, 2018.

(b) Temporary Anchorages. Anchorages for rope descent or rope access systems on structure or natural surroundings other than buildings must be independent from each other (primary support rope and secondary fall arrest system) and must be:

(A) Capable of supporting at least 5000 pounds (22.24 kN) for each employee attached: or

(B) Designed, installed, and used, under the supervision of a qualified person, as part of a complete system that maintains a safety factor of at least two.

(5) Rope descent systems. The employer must ensure:

(a) No rope descent system is used for heights greater than 300 feet (91 m) above grade unless the employer demonstrates that it is not feasible to access such heights by any other means or that those means pose a greater hazard than using a rope descent system;

(b) The rope descent system is used in accordance with instructions, warnings, and design limitations set by the manufacturer or under the direction of a qualified person;

(c) Each employee who uses the rope descent system is trained in accordance with 1910.30;

(d) The rope descent system is inspected at the start of each workshift that it is to be used. The employer must ensure damaged or defective equipment is removed from service immediately and replaced;

(e) The rope descent system has proper rigging, including anchorages and tiebacks, with particular emphasis on providing tiebacks when counterweights, cornice hooks, or similar non-permanent anchorages are used;

(f) Each employee uses a separate, independent personal fall arrest system that meets the requirements of 1910.140 in Division 2, Subdivision I;

(g) All components of each rope descent system, except seat boards, are capable of sustaining a minimum rated load of 5,000 pounds (22.2 kN). Seat boards must be capable of supporting a live load of 300 pounds (136 kg);

Note to 437-002-2027(5)(g): Oregon OSHA based this rule on federal OSHA's 1910.27(b)(2)(vii). Federal OSHA's discussion on final rule 1910.27(b)(2)(vii), as published on page 82577 of the Federal Register on November 18, 2016, states the following: "OSHA notes that the final rule does not preclude the use of lines or ropes that have knots, swage, or eye splice, which could reduce the tensile strength of a rope or line. However, under final paragraph (b)(2)(vii), even if an employer uses a line or rope that has a knot, swage, or eye splice, the rope or line still must be capable of supporting a minimum rated load of 5,000 pounds."

(h) Prompt rescue of each employee is provided in the event of a fall, equipment malfunction or entanglement;

(i) The ropes of each rope descent system are effectively padded or otherwise protected, where they can contact edges of the building, anchorage, obstructions, or other surfaces, to prevent them from being cut or weakened;

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(j) Stabilization is provided at the specific work location when descents are greater than 130 feet (39.6 m);

(k) No employee uses a rope descent system when hazardous weather conditions, such as storms or gusty or excessive wind, are present;

(l) Equipment, such as tools, squeezees, or buckets, is secured by a tool lanyard or similar method to prevent it from falling;

(m) The ropes of each rope descent system are protected from exposure to open flames, hot work, corrosive chemicals, and other destructive conditions;

(n) The ropes of each rope descent system are made from industrial synthetic fibers and classified as life-safety rope. Ropes made from natural fibers and polypropylene cannot be used for rope descent;

(o) Descent control devices include automatic locks that will engage and prevent an uncontrolled descent in case the employee lets go or loses control of the device;

(p) Anchorages for rope descent systems meet the requirements of 437-002-2027(4) of this rule; and

(q) A pre-work briefing is conducted with each employee involved in rope descent to include, but is not limited to:

(A) The objective(s) of the work to be performed.

(B) Site-specific hazards.

(C) Environmental conditions that could affect the safety of the employee using the system.

(D) Emergency procedures to be followed (e.g., employee rescue).

(6) Rope access systems.

(a) Exceptions. 437-002-2027(6) does not apply to:

(A) Emergency search and rescue operations.

(B) Entertainment performances and rehearsals. This exception does not apply to the set up, dismantling or operation of; stages, sound systems, lighting systems, pyrotechnics, associated supporting structures or props.

(C) Tree and shrub service activities covered by Division 2, Subdivision R.

(b) Written Rope Access Program. The employer must develop, implement and maintain a written Rope Access Program that includes, but not be limited to the following elements:

(A) Identification of a program administrator responsible for the overall rope access program.

(B) Methods of access and anchorage used by the employer.

(C) Listing of specific rope skills (i.e. ascending, descending, traversing, aid climbing, etc.) necessary to complete the work.

(D) Employee selection criteria.

(E) Equipment selection and inspection criteria.

(F) Roles and responsibilities of rope access team members.

(G) Communication systems.

(H) Employee training program.

(I) Rescue and emergency protocol.

(J) Identification of any unique site hazards that may affect the safety of employees using rope access equipment and methods.

(K) Pre-work briefings.

(c) Program Administration. The employer must ensure that the rope access program is administered by a program administrator knowledgeable in the elements of the written rope access program as required by subsection (6)(b) of this rule.

(d) Training and Evaluation. The employer must conduct training according to the requirements of 1910.30, and ensure:

(A) Employees who use rope access equipment and/or are engaged in rope access activities are trained and evaluated by persons with the qualifications and experience necessary to effectively instruct the employee in the proper fundamentals of rope access, equipment, and techniques described in subsection (6)(b) of this rule;

(B) Employees, prior to engaging in rope access activities, are trained in accordance with the written Rope Access Program, including applicable equipment, skills and rescue methods required of the work;

(C) Employees, prior to engaging in rope access activities, are evaluated by a hands-on demonstration by the employee of his/her skills;

(D) Employees, at a minimum, who perform rope access activities receive annual refresher training in accordance with 1910.30 and the written Rope Access Program;

(E) Employees, at a minimum, who perform rope access activities are annually re-evaluated (e.g., hands-on demonstration) of their ability to perform work in accordance with the written Rope Access Program;

(F) Employees who perform rope access are re-trained and re-evaluated before further engaging in rope access activities when the employer has reason to believe the employee does not have the understanding or skills required by 1910.30 and the written Rope Access Program.

Additionally, when the employer has reason to believe the employee has violated a condition of the written Rope Access Program, the employee must be re-trained and re-evaluated. Re-training and re-evaluation under this subsection may be limited to the specific topics, concepts or skills which the employer believes, or the employee has demonstrated, are deficient;

(G) All training, re-training, evaluation and re-evaluation events are documented, and retained for three years; and

(H) Documentation of employee training, re-training, evaluation and re-evaluation include the following:

(i) Name of the employee;

(ii) Skills included in the training or evaluation;

(iii) Date(s) of the training or re-training;

(iv) Date(s) of the evaluation or re-evaluation;

(v) Identity of the person(s) performing the training or evaluation.

(e) Rope Access Use. When rope access is used, the employer must ensure:

(A) There are at least two rope access trained employees present at the physical location where rope access is being performed;

(B) No employee uses a rope access system when hazardous weather conditions, such as storms or excessive wind, are present;

(C) Anchorages for rope access systems meet the requirements of 437-002-2027(4) of this rule;

(D) Each employee using a rope access system 4 feet (1.2 m) or more above a lower level is protected from falling by a personal fall arrest system in compliance with 1910.140 in 2/I with the following exceptions to 1910.140:

(i) 1910.140(c)(1) does not apply when aluminum carabiners meet the strength requirements of 1910.140(c)(8).

(ii) 1910.140(c)(10)(i) does not apply when carabiners are connected directly to rope meeting the requirements of 437-002-2027(6)(e)(E)(i) and (ii).

(iii) 1910.140(c)(10)(ii) does not apply during temporary rope transfer operations when carabiners are connected to each other lasting only long enough to complete the transfer and not as a part of the rigging for normal use.

(iv) 1910.140(c)(10)(iii) does not apply during temporary rope transfer operations when multiple carabiners are connected to a single D-ring lasting only long enough to complete the transfer and not as a part of the rigging for normal use.

(E) Components used for rope access support, positioning, transfer and back-up (fall protection) must meet the following minimum requirements:

(i) Primary support ropes and secondary fall arrest ropes are made from industrial synthetic fibers and classified as life-safety rope. Ropes made from natural fibers or polypropylene cannot be used for rope access.

(ii) Primary support ropes and secondary fall arrest ropes have a minimum rated breaking strength before being knotted, swaged or eye-spliced of 6,000 pounds (26.69 kN) as established by the rope manufacturer.

(iii) Combination harnesses (designed and manufactured for rope access positioning and employee fall protection) are capable of sustaining a minimum rated load of 3,600 pounds (16.01 kN).

(iv) Seat boards must be capable of supporting a live load of 300 pounds (136 kg).

(v) Connectors must have an automatic locking feature and are capable of sustaining a minimum rated load of 5,000 pounds (22.24 kN).

(vi) Descent control devices include automatic locks that will engage and prevent an uncontrolled descent in case the employee lets go or loses control of the device and are capable of sustaining a minimum rated load of 3,000 pounds (13.35 kN).

(vii) Manufactured lanyards (cowstails) are capable of sustaining a minimum rated load of 5,000 pounds (22.24 kN) as established by the manufacturer.

(viii) Job-made lanyards (cowstails), when constructed of rope, meet the requirements of 437-002-2027(6)(e)(E)(i) and (ii).

(ix) Back-up devices (fall arrest) must be capable of sustaining a minimum rated load of 3,600 pounds (16.01 kN).

(x) Auxiliary equipment designed to allow an employee to move along a line (rope) such as rope clamps, rope grabs, chest ascenders, foot ascender and hand ascenders must be capable of sustaining a minimum rated load of 1,000 pounds (4.49 kN).

(F) Rope access system components are used in accordance with instructions, warnings, and design limitations set by the manufacturer or under the direction of a qualified person;

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(G) Rope access system components are inspected at the start of each workshift that it is to be used. The employer must ensure damaged or defective equipment is removed from service immediately and replaced;

(H) Prompt rescue of each employee is provided in the event of a fall, equipment malfunction or entanglement, or assure employees are able to rescue themselves;

(I) The ropes of each rope access system are effectively padded or otherwise protected, where they can contact edges of the building, anchorage, obstructions, structure, or other surfaces, to prevent them from being cut or weakened;

(J) The ropes of each rope access system are protected from exposure to open flames, hot work, corrosive chemicals, and other destructive conditions;

(K) Equipment, such as tools are secured by a tool lanyard or similar method to prevent it from falling where employees below are exposed to falling objects;

(L) A pre-work briefing is conducted with each employee involved in rope access to include, but is not limited to:

(i) The objective(s) of the work to be performed.

(ii) Site-specific hazards.

(iii) Environmental conditions that could affect the safety of the employee using the system.

(iv) Emergency procedures to be followed (e.g., employee rescue).

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 2-2017, f. 5-16-17, cert. ef. 11-1-17

437-002-2031

Delayed Effective Dates for Walking-Working Surfaces

(1) Scope and application. The delayed effective dates in this rule apply in Oregon to 1910.24, 1910.25, 1910.26, 1910.28, 1910.29 and 1910.30 within Subdivision 2/D.

(2) Step bolts and manhole steps (1910.24). The delayed federal effective dates referenced in 1910.24 do not apply in Oregon. In Oregon, the following delayed effective dates apply:

(a) 1910.24(a)(1): Replace January 17, 2017 with January 1, 2018.

(b) 1910.24(a)(6): Replace January 17, 2017 with January 1, 2018.

(c) 1910.24(a)(7): Replace January 17, 2017 with January 1, 2018.

(d) 1910.24(b)(2): Replace January 17, 2017 with January 1, 2018.

(3) Stairways (1910.25). The delayed federal effective dates referenced in 1910.25 do not apply in Oregon. In Oregon, the following delayed effective dates apply:

(a) 1910.25(b)(5)(i): Replace January 17, 2017 with January 1, 2018.

(b) 1910.25(b)(5)(ii): Replace January 17, 2017 with January 1, 2018.

(c) 1910.25(c)(5): Replace January 17, 2017 with January 1, 2018.

(4) Dockboards (1910.26). The delayed federal effective date referenced in 1910.26(b)(1) does not apply in Oregon. In Oregon, replace January 17, 2017 with January 1, 2018.

(5) Duty to have fall protection and falling object protection (1910.28). The delayed federal effective dates referenced in 1910.28 do not apply in Oregon. In Oregon, the following delayed effective dates apply:

(a) 1910.28(b)(9)(i)(A): Replace November 19, 2018 with November 1, 2019.

(b) 1910.28(b)(9)(i)(B): Replace November 19, 2018 with November 1, 2019.

(c) 1910.28(b)(9)(i)(D): Replace November 18, 2036 with December 1, 2036.

(d) 1910.28(b)(10)(ii): Replace November 19, 2018 with November 1, 2019.

(6) Fall protection systems and falling object protection – criteria and practices (1910.29). The delayed federal effective dates referenced in 1910.29 do not apply in Oregon. In Oregon, the following delayed effective dates apply:

(a) 1910.29(f)(1)(ii)(A): Replace January 17, 2017 with January 1, 2018.

(b) 1910.29(f)(1)(ii)(B): Replace January 17, 2017 with January 1, 2018.

(7) Training requirements (1910.30). The delayed federal effective dates referenced in 1910.30 do not apply in Oregon. In Oregon, the following delayed effective dates apply:

(a) 1910.30(a)(1): Replace May 17, 2017 with May 1, 2018.

(b) 1910.30(b)(1): Replace May 17, 2017 with May 1, 2018.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 2-2017, f. 5-16-17, cert. ef. 11-1-17

437-002-2306

Personal Protective Equipment

(1) General. For employers engaged in general industry activities, personal protective equipment must meet the requirements of Division 2/I. For employers engaged in construction activities, personal protective equipment must meet the requirements of Division 3/E.

Note 1: 437-002-0134 (4) and 437-003-0134 (4) set employer payment obligations for the personal protective equipment required by this rule, including, but not limited to, the fall protection equipment required by paragraph (2) of this rule, the electrical protective equipment required by 437-002-2311(3) of Division 2/RR, and the flame-resistant and arc-rated clothing and other protective equipment required by 437-002-2311(8) of Division 2/RR.

Note 2: For general industry activities, refer to Division 2/I, 1910.137, for Electrical Protective Equipment requirements. For construction activities, refer to Division 3/E, 1926.97, for Electrical Protective Equipment requirements.

(2) Fall protection.

(a) For employers engaged in general industry activities, personal fall arrest systems must meet the requirements of Division 2/I. For employers engaged in construction activities, personal fall arrest systems must meet the requirements of Division 3/M.

(b) Personal fall arrest equipment used by employees who are exposed to hazards from flames or electric arcs, as determined by the employer under 437-002-2311(8)(a) of Division 2/RR, must be capable of passing a drop test equivalent to that required by paragraph (2)(c)(L) of this rule after exposure to an electric arc with a heat energy of 40±5 cal/cm².

(c) Body belts and positioning straps for work-positioning equipment must meet the following requirements:

(A) Hardware for body belts and positioning straps must meet the following requirements:

(i) Hardware must be made of drop-forged steel, pressed steel, formed steel, or equivalent material.

(ii) Hardware must have a corrosion-resistant finish.

(iii) Hardware surfaces must be smooth and free of sharp edges.

(B) Buckles must be capable of withstanding an 8.9-kilonewton (2,000-pound-force) tension test with a maximum permanent deformation no greater than 0.4 millimeters (0.0156 inches).

(C) D rings must be capable of withstanding a 22-kilonewton (5,000-pound-force) tensile test without cracking or breaking.

(D) Snaphooks must be capable of withstanding a 22-kilonewton (5,000-pound-force) tension test without failure.

Note to paragraph (2)(c)(D) of this rule: Distortion of the snaphook sufficient to release the keeper is considered to be tensile failure of a snaphook.

(E) Top grain leather or leather substitute may be used in the manufacture of body belts and positioning straps; however, leather and leather substitutes may not be used alone as a load-bearing component of the assembly.

(F) Plied fabric used in positioning straps and in load-bearing parts of body belts must be constructed in such a way that no raw edges are exposed and the plies do not separate.

(G) Positioning straps must be capable of withstanding the following tests:

(i) A dielectric test of 819.7 volts, AC, per centimeter (25,000 volts per foot) for 3 minutes without visible deterioration;

(ii) A leakage test of 98.4 volts, AC, per centimeter (3,000 volts per foot) with a leakage current of no more than 1 mA;

Note to paragraphs (2)(c)(G)(i) and (2)(c)(G)(ii): Positioning straps that pass direct-current tests at equivalent voltages are considered as meeting this requirement.

(iii) Tension tests of 20 kilonewtons (4,500 pounds-force) for sections free of buckle holes and of 15 kilonewtons (3,500 pounds-force) for sections with buckle holes;

(iv) A buckle-tear test with a load of 4.4 kilonewtons (1,000 pounds-force); and

(v) A flammability test in accordance with Table RR-1. Table RR-1

(H) The cushion part of the body belt must contain no exposed rivets on the inside and must be at least 76 millimeters (3 inches) in width

(I) Tool loops must be situated on the body of a body belt so that the 100 millimeters (4 inches) of the body belt that is in the center of the back, measuring from D ring to D ring, is free of tool loops and any other attachments.

(J) Copper, steel, or equivalent liners must be used around the bars of D rings to prevent wear between these members and the leather or fabric enclosing them.

(K) Snaphooks must be of the locking type meeting the following requirements:

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(i) The locking mechanism must first be released, or a destructive force must be placed on the keeper, before the keeper will open.

(ii) A force in the range of 6.7 N (1.5 lbf) to 17.8 N (4 lbf) must be required to release the locking mechanism.

(iii) With the locking mechanism released and with a force applied on the keeper against the face of the nose, the keeper may not begin to open with a force of 11.2 N (2.5 lbf) or less and must begin to open with a maximum force of 17.8 N (4 lbf).

(L) Body belts and positioning straps must be capable of withstanding a drop test as follows:

(i) The test mass must be rigidly constructed of steel or equivalent material with a mass of 100 kg (220.5 lbm). For work-positioning equipment used by employees weighing more than 140 kg (310 lbm) fully equipped, the test mass must be increased proportionately (that is, the test mass must equal the mass of the equipped worker divided by 1.4).

(ii) For body belts, the body belt must be fitted snugly around the test mass and must be attached to the test structure anchorage point by means of a wire rope.

(iii) For positioning straps, the strap must be adjusted to its shortest length possible to accommodate the test and connected to the test-structure anchorage point at one end and to the test mass on the other end.

(iv) The test mass must be dropped an unobstructed distance of 1 meter (39.4 inches) from a supporting structure that will sustain minimal deflection during the test.

(v) Body belts must successfully arrest the fall of the test mass and must be capable of supporting the mass after the test.

(vi) Positioning straps must successfully arrest the fall of the test mass without breaking, and the arrest force may not exceed 17.8 kilonewtons (4,000 pounds-force). Additionally, snaphooks on positioning straps may not distort to such an extent that the keeper would release.

Note to paragraph (2)(c) of this rule: When used by employees weighing no more than 140 kg (310 lbm) fully equipped, body belts and positioning straps that conform to American Society of Testing and Materials Standard Specifications for Personal Climbing Equipment, ASTM F887-12e1, are deemed to be in compliance with paragraph (2)(c) of this rule.

(d) The following requirements apply to the care and use of personal fall protection equipment.

(A) Body belts and positioning straps must never be stored with sharp or edged tools.

(B) Small tools carried in the belt must be placed so they present the least danger of coming in accidental contact with energized parts. Sharp or pointed tools must not be carried unless in scabbards, or are otherwise effectively safeguarded.

(C) Work-positioning equipment must be inspected before use each day to determine that the equipment is in safe working condition. Work-positioning equipment that is not in safe working condition may not be used.

Note to paragraph (2)(d)(C): Appendix F to Division 2/RR contains guidelines for inspecting work-positioning equipment.

(D) The use of chainsaws is prohibited on all overhead work where workers are supported by a single climbing belt or rope.

(E) Workers must not place positioning straps around the pole above the top crossarm except where adequate protection is taken to prevent it from slipping over the top of the pole. Workers must not allow either end of a strap to hang loose, either in climbing or descending poles or other structures.

(F) Gaffs and Climbers.

(i) Gaffs and climbers must be maintained according to the manufacturer's recommendations.

(ii) Workers must remove climbers before driving any vehicle.

(iii) Climbers must not be worn except when required. Workers must not continue to wear their climbers while working on the ground except for brief periods when a worker is necessarily off the pole.

(iv) While climbers are not being worn, the gaffs must be properly guarded.

(G) Safety lines must be readily available while working aloft to be used for emergency rescue such as lowering a worker to the ground. Such safety lines must be a minimum of one-half-inch diameter and three or four strand first-grade manila or its equivalent in strength (2,650 lb.) and durability.

(H) For employers engaged in general industry activities, personal fall arrest systems must be used in accordance with Division 2/I. For employers engaged in construction activities, personal fall arrest systems must be used in accordance with Division 3/M.

Note to paragraph (2)(d)(H): Fall protection equipment rigged to arrest falls is considered a fall arrest system and must meet the applicable requirements for the design and use of those systems. Fall protection equipment rigged for work positioning is considered work-positioning

equipment and must meet the applicable requirements for the design and use of that equipment.

(I) The employer must ensure that employees use fall protection systems as follows:

(i) Each employee working from an aerial lift must use a travel restraint system or a personal fall arrest system. Paragraph (c)(2)(v) of 1910.67 and paragraph (b)(2)(v) of 1926.453 do not apply.

(ii) Except as provided in paragraph (2)(d)(I)(iii) of this rule, each employee in elevated locations more than 1.2 meters (4 feet) above the ground on poles, towers, or similar structures must use a personal fall arrest system, work-positioning equipment, or fall restraint system, as appropriate, if the employer has not provided other fall protection meeting Division 2/D, Walking-Working Surfaces; or Division 3/M, Fall Protection.

(iii) Each qualified employee climbing or changing location on poles, towers, or similar structures must use fall protection equipment unless the employer can demonstrate that climbing or changing location with fall protection is infeasible or creates a greater hazard than climbing or changing location without it.

(I) The employer must ensure that employees use fall protection systems as follows:

(i) Each employee working from an aerial lift must use a fall restraint system or a personal fall arrest system. Paragraph (c)(2)(v) of 1910.67 and paragraph (b)(2)(v) of 1926.453 do not apply.

(ii) Except as provided in paragraph (2)(d)(I)(iii) of this rule, each employee in elevated locations more than 1.2 meters (4 feet) above the ground on poles, towers, or similar structures must use a personal fall arrest system, work-positioning equipment, or fall restraint system, as appropriate, if the employer has not provided other fall protection meeting Division 2/D, Walking-Working Surfaces; or Division 3/M, Fall Protection.

(iii) Each qualified employee climbing or changing location on poles, towers, or similar structures must use fall protection equipment unless the employer can demonstrate that climbing or changing location with fall protection is infeasible or creates a greater hazard than climbing or changing location without it.

Note 1 to paragraphs (2)(d)(I)(ii) and (2)(d)(I)(iii) of this rule: These paragraphs apply to structures that support overhead electric power transmission and distribution lines and equipment. They do not apply to portions of buildings, such as loading docks, or to electric equipment, such as transformers and capacitors. Division 2/D, and Division 3/M contain the duty to provide fall protection associated with walking and working surfaces.

(J) Work-positioning equipment must be rigged so that an employee can free fall no more than 0.6 meters (2 feet).

(K) Anchorages for work-positioning equipment must be capable of supporting at least twice the potential impact load of an employee's fall, or 13.3 kilonewtons (3,000 pounds-force), whichever is greater.

Note to paragraph (2)(d)(K): Wood-pole fall-restriction devices meeting American Society of Testing and Materials Standard Specifications for Personal Climbing Equipment, ASTM F887-12e1, are deemed to meet the anchorage-strength requirement when they are used in accordance with manufacturers' instructions.

(L) Unless the snaphook is a locking type and designed specifically for the following connections, snaphooks on work-positioning equipment may not be engaged:

(i) Directly to webbing, rope, or wire rope;

(ii) To each other;

(iii) To a D ring to which another snaphook or other connector is attached;

(iv) To a horizontal lifeline; or

(v) To any object that is incompatibly shaped or dimensioned in relation to the snaphook such that accidental disengagement could occur should the connected object sufficiently depress the snaphook keeper to allow release of the object.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 3-2015, f. 10-9-15, cert. ef. 1-1-16; OSHA 2-2017, f. 5-16-17, cert. ef. 11-1-17

437-002-2307

Portable Ladders and Platforms

(1) General. For employers involved in general industry activities, requirements for portable ladders contained in Division 2/D apply in addition to the requirements of this rule, except as specifically noted in paragraph (2) of this rule. For employers involved in construction activities, requirements for portable ladders contained in Division 3/X apply in addition to the requirements of this rule, except as specifically noted in paragraph (2) of this rule.

(2) Special ladders and platforms. For general industry activities, portable ladders used on structures or conductors in conjunction with overhead line work need not meet 1910.25(d)(2)(i) and (d)(2)(iii) or

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1910.26(c)(3)(iii). For construction activities, portable ladders and platforms used on structures or conductors in conjunction with overhead line work need not meet 1926.1053(b)(5)(i) and (b)(12). Portable ladders and platforms used on structures or conductors in conjunction with overhead line work must meet the following requirements:

(a) In the configurations in which they are used, portable platforms must be capable of supporting without failure at least 2.5 times the maximum intended load.

(b) Portable ladders and platforms may not be loaded in excess of the working loads for which they are designed.

(c) Portable ladders and platforms must be secured to prevent them from becoming dislodged.

(d) Portable ladders and platforms may be used only in applications for which they are designed.

(3) Conductive ladders. Portable metal ladders and other portable conductive ladders may not be used near exposed energized lines or equipment. However, in specialized high-voltage work, conductive ladders must be used when the employer demonstrates that nonconductive ladders would present a greater hazard to employees than conductive ladders.

Stat. Auth.: ORS 654.025(2) & 656.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 3-2015, f. 10-9-15, cert. ef. 1-1-16; OSHA 2-2017, f. 5-16-17, cert. ef. 11-1-17

Department of Corrections Chapter 291

Rule Caption: Alternative Incarceration Programs

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Subject: These revisions are necessary to differentiate the definitions and policies of nonprison leave associated with alternative incarceration programs and short-term transitional leave (addressed in OAR 291-063) and align the rules with statutory terminology.

Rules Coordinator: Janet R. Worley — (503) 945-0933

291-062-0100

Authority, Purpose and Policy

(1) Authority: The authority for these rules is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 421.500 to 421.512, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of these rules is to establish special alternative incarceration programs and establish department policy and procedures for the program's operation and management in accordance with ORS 421.500 to 421.512.

(3) Policy: Within the inherent limitations of resources, and the need to maintain facility security, internal order, and discipline, and the health and safety of staff, inmates, and the public, it is the policy of the Department of Corrections to discharge its statutory responsibilities to establish alternative incarceration programs by creating and operating programs that promote inmate rehabilitation during incarceration and reduce the risk of continuing criminal conduct when the inmate is returned to the community.

Stat. Auth.: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, 423.075

Stats. Implemented: ORS 179.040, 421.500 - 421.512, 423.020, 423.030, 423.075

Hist.: DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04; DOC 5-2004, f. & cert. ef. 7-12-04; DOC 3-2009(Temp), f. & cert. ef. 3-20-09 thru 9-11-09; DOC 12-2009, f. & cert. ef. 7-13-09; DOC 6-2017, f. & cert. ef. 5-17-17

291-062-0110

Definitions

(1) Alternative Incarceration Program (AIP): A highly structured corrections program that includes intensive interventions, rigorous personal responsibility and accountability, and service to the community.

(2) Custody Cycle: The time period during which an offender begins incarceration with the Department of Corrections and is under the supervision of community corrections until discharge from all Department of Corrections and community corrections incarceration and supervision.

(3) Other Charges: Any criminal or civil accusatory instrument that alleges wrong doing and for which a person may be imprisoned or incarcerated.

(4) Short-Term Transitional Leave: A period of leave not to exceed 90 days preceding an established release date designed to provide inmates with transitional opportunities that promote successful reintegration into the community. Short-term transitional leave is granted in accordance with ORS 421.158.

(5) Nonprison Leave: A period of leave not to exceed 90 days preceding an established release date granted to inmates successfully completing the institution phase of an alternative incarceration program (AIP). Nonprison leave is designed to provide inmates with transitional opportunities that promote successful reintegration into the community and is granted in accordance with ORS 137.750, 137.751, 421.508, and 421.510, and the department's rules on Alternative Incarceration Programs (OAR 291-062).

(6) Term of Incarceration: The period of commitment to the legal and physical custody of the department imposed by a sentencing court in a judgment. For purposes of these administrative rules, "term of incarceration" includes pre-sentence incarceration credit granted to an inmate by the department under ORS 137.370, as well as any time an inmate spends on short-term transitional leave under ORS 421.168 or nonprison leave under ORS 421.510.

Stat. Auth.: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, 423.075

Stats. Implemented: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, 423.075

Hist.: DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04; DOC 5-2004, f. & cert. ef. 7-12-04; DOC 11-2005, f. 8-19-05, cert. ef. 8-22-05; DOC 3-2009(Temp), f. & cert. ef. 3-20-09 thru 9-11-09; DOC 12-2009, f. & cert. ef. 7-13-09; DOC 20-2011(Temp), f. & cert. ef. 10-17-11 thru 4-13-12; DOC 4-2012, f. & cert. ef. 3-1-12; DOC 6-2017, f. & cert. ef. 5-17-17

291-062-0120

General

(1) The Department of Corrections has established and operates alternative incarceration programs.

(a) Alternative incarceration programs encompass intensive cognitive programming, intensive addictions treatment, or a combination of the two.

(b) Each alternative incarceration program is a minimum of 270 days in duration and includes two components — a structured institution program and a period of structured nonprison leave.

(c) Each alternative incarceration program requires its participants to engage in a minimum of 14 hours per day of highly structured routine, seven days per week for the duration of the program.

(2) Inmates are required to participate in and successfully complete transition classes offered as a condition of program graduation. The number and frequency of these classes will be determined by each facility.

(3) The department in its discretion may grant nonprison leave to inmates who successfully complete the institution phase of an alternative incarceration program if:

(a) The inmate's sentencing judgment authorizes a release to post-prison supervision in accordance with ORS 421.508, 137.750, and 137.751; and

(b) The inmate has identified viable self-support options in the community; or

(c) The supervising community corrections agency has approved a temporary subsidy, such as treatment transition funds, that will assist the inmate with successful community transition.

(d) All expenses not otherwise approved by the supervising community corrections agency must be covered by the inmate.

(4) For those whose crimes were committed prior to January 1, 2009, transitional leave for alternative incarceration programs was authorized under ORS 421.128. For the purposes of these rules, the operational aspects, processes, and any subsequent violation sanctions are the same as and subject to rules referencing nonprison leave.

Stat. Auth.: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, and 423.075

Stats. Implemented: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, and 423.075

Hist.: DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04; DOC 5-2004, f. & cert. ef. 7-12-04; DOC 11-2005, f. 8-19-05, cert. ef. 8-22-05; DOC 3-2009(Temp), f. & cert. ef. 3-20-09 thru 9-11-09; DOC 12-2009, f. & cert. ef. 7-13-09; DOC 6-2017, f. & cert. ef. 5-17-17

291-062-0130

Inmate Eligibility

(1) The department will identify inmates eligible to participate in alternative incarceration programs. To be eligible to participate in the program an inmate must:

(a) Be sentenced to the legal and physical custody of the department and be subject to a term of post-prison supervision upon satisfaction of a term of physical confinement in a Department of Corrections facility;

(b) Be at least 18 years of age at the time of entry into the program, or may be under 18 years of age and have been convicted of a crime upon remand from juvenile court; and

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(c) Be assigned Level 1 or Level 2 in accordance with the department's rules on Classification (Inmate) (OAR 291-104) and have no more than 36 months to serve at the time of program entry.

(2) An inmate is not eligible to participate in alternative incarceration programs during service of a sentence for conviction of a crime described in:

- (a) ORS 163.095 (Aggravated Murder),
- (b) ORS 163.115 (Murder),
- (c) ORS 163.118 (Manslaughter I),
- (d) ORS 163.235 (Kidnapping I),
- (e) ORS 163.355 (Rape III),
- (f) ORS 163.365 (Rape II),
- (g) ORS 163.375 (Rape I),
- (h) ORS 163.385 (Sodomy III),
- (i) ORS 163.395 (Sodomy II),
- (j) ORS 163.405 (Sodomy I),
- (k) ORS 163.408 (Unlawful Sexual Penetration II),
- (l) ORS 163.411 (Unlawful Sexual Penetration I),
- (m) ORS 163.415 (Sexual Abuse III),
- (n) ORS 163.425 (Sexual Abuse II),
- (o) ORS 163.427 (Sexual Abuse I),
- (p) ORS 163.435 (Contributing to the Delinquency of a Minor),
- (q) ORS 163.525 (Incest),
- (r) ORS 164.325 (Arson I), or
- (s) ORS 164.415 (Robbery I).

(3) An inmate who is serving a sentence, including a sentence imposed under ORS 137.712, for a crime listed in ORS 137.700, 137.707, 163.095, or 163A.005(5) committed on or after January 1, 2009, is not eligible to participate in alternative incarceration programs.

(4) An inmate is not eligible to participate in alternative incarceration programs if the inmate is serving a sentence under the provisions of ORS 137.635.

(5) An inmate is not eligible to participate in alternative incarceration programs if the inmate is serving a sentence under ORS 161.610 until the inmate completes the minimum incarceration term imposed by the court less earned time under ORS 421.121.

(6) An inmate is not eligible to participate in alternative incarceration programs if the inmate:

(a) Has an adult conviction for felony escape that was committed within three years prior to the time of program entry, or has a conviction for unauthorized departure from the legal and physical custody of the Department of Corrections or its authorized agents that was committed within three years prior to the time of program entry.

(b) Is serving non-sentencing guidelines prison terms (sentences with crime dates prior to November 1, 1989), or has unresolved criminal prosecutions, consecutive county jail terms, or any other circumstances that would conflict with the inmate's release from prison upon satisfactory completion of an alternative incarceration program.

(c) Has a current detainer.

(A) Inmates who are serving a sentence for a crime committed prior to January 1, 2009, and who have detainers lodged with the department after they have been selected and assigned to one of the programs, and the detainer is discovered after the inmate has completed approximately one-half of the program, may be permitted to continue their participation in the program at the discretion of the functional unit manager or designee based on program performance to date.

(B) Inmates who are serving a sentence for a crime committed on or after January 1, 2009, and who have a current detainer from any jurisdiction that will not expire prior to the inmate's calculated date of release to post-prison supervision are not eligible for and shall not be permitted to continue participation in an alternative incarceration program.

(d) Is currently assigned to special security housing for reasons of protective custody, and the inmate's assignment to the program is otherwise determined by department officials to pose a threat to the safe, secure, and orderly operation and management of the program, including the safety of department staff and inmates.

(e) Has less than ten months to serve from the first day of program entry. Inmates that have between nine and ten months to serve may participate in alternative incarceration programs with the functional unit manager's or designee's approval.

(f) Is serving a parole or post-prison supervision violation sanction pursuant to ORS 144.108(3)(b).

(7) For sentences imposed for crimes committed prior to January 1, 2009, an inmate is not eligible to participate in alternative incarceration programs if the inmate is serving a sentence under the provision of ORS

137.700 or ORS 137.707 until completion of the mandatory minimum incarceration term. For sentences imposed for crimes committed on or after December 5, 1996, the inmate is eligible after completion of the mandatory minimum incarceration term only upon order of the sentencing court as ordered in a judgment pursuant to ORS 137.750.

(8) For sentences imposed for crimes committed prior to January 1, 2009, an inmate is eligible to participate in alternative incarceration programs if the inmate, on or after April 1, 1995, commits and is convicted of:

(a) Assault II as defined in ORS 163.175(1)(b) (Intentionally or knowingly causes physical injury to another by means of a deadly or dangerous weapon);

(b) Kidnapping II (ORS 163.225); or

(c) Robbery II (ORS 164.405) unless the sentencing court notwithstanding ORS 137.700 and 137.707 has imposed a lesser sentence pursuant to ORS 137.712 and (for crimes committed on or after December 5, 1996, and prior to January 1, 2009) only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(9) For sentences imposed for crimes committed prior to January 1, 2009, an inmate is not eligible to participate in alternative incarceration programs if the inmate on or after October 23, 1999, commits and is convicted of Manslaughter II as defined in ORS 163.125, unless the sentencing court notwithstanding ORS 137.700 and 137.707 has imposed a lesser sentence pursuant to ORS 137.712 and only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(10) An inmate is not eligible to participate in alternative incarceration programs if the inmate is serving a sentence under the provisions of ORS 161.725 or ORS 161.737 (dangerous offenders) for a crime committed on or after November 1, 1989. An inmate shall not be allowed to participate in alternative incarceration programs even after completion of the required minimum incarceration term (determinate sentence) even if the Board of Parole and Post-Prison Supervision finds that the person is no longer dangerous or finds that the person remains dangerous but can be adequately controlled with supervision and mental health treatment and sets a post-prison supervision release date.

(11) If otherwise eligible under Oregon law, any person sentenced for a crime committed on or after December 5, 1996, and prior to January 1, 2009, may be considered for alternative incarceration programs only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(12) If otherwise eligible under Oregon law, an inmate sentenced for a crime committed on or after January 1, 2009, may be considered for non-prison leave and release to post-prison supervision only upon order of the sentencing court as directed in a judgment pursuant to ORS 421.508(4).

(13) An inmate is not eligible for an alternative incarceration program during the current admission if he or she previously participated in another alternative incarceration program in the same custody cycle.

(14) An inmate is not eligible for an alternative incarceration program who:

(a) Scores a six or higher on the Static 99-R and Definitions risk assessment tool (Attachments A, B, and C);

(b) Has a predatory sex offender designation; or

(c) Is classified as a Tier III sex offender pursuant to OAR 255-085-0020.

Stat. Auth.: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, 423.075

Stats. Implemented: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, 423.075

Hist.: DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04; DOC 5-2004, f. & cert. ef. 7-12-04; DOC 11-2005, f. 8-19-05, cert. ef. 8-22-05; DOC 7-2007, f. & cert. ef. 10-9-07; DOC 3-2009(Temp), f. & cert. ef. 3-20-09 thru 9-11-09; DOC 12-2009, f. & cert. ef. 7-13-09; DOC 6-2017, f. & cert. ef. 5-17-17

291-062-0140 Inmate Selection

(1) The department in its discretion may accept eligible inmates into an alternative incarceration program based on its determination that the inmate's participation in such a program is consistent with the safety of the community, the welfare of the applicant, the program objectives and the rules of the department.

(2) The functional unit manager or designee of each facility that has an alternative incarceration program shall appoint a committee that is responsible for making recommendations to the functional unit manager or designee on the placement of inmates in the program based on treatment readiness.

(3) An inmate will not be accepted into an alternative incarceration program unless the inmate submits a written request to participate.

(a) The request must contain a statement signed by the inmate applicant providing that the inmate:

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(A) Is physically and mentally able to withstand the rigors of the program; and

(B) Has reviewed the alternative incarceration program descriptions provided by the department and agree to comply with each of the requirements.

(b) Otherwise eligible inmate applicants with a physical or mental disability will be evaluated individually by the department to determine whether the inmate may successfully participate in the fundamental components of an alternative incarceration program.

(c) The department shall make the final determination regarding an inmate's physical or mental ability to withstand the rigors of the program.

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

Stat. Auth.: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, 423.075

Stats. Implemented: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, 423.075

Hist.: DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04; DOC 5-2004, f. & cert. ef. 7-12-04; DOC 11-2005, f. 8-19-05, cert. ef. 8-22-05; DOC 7-2007, f. & cert. ef. 10-9-07; DOC 3-2009(Temp), f. & cert. ef. 3-20-09 thru 9-11-09; DOC 12-2009, f. & cert. ef. 7-13-09; DOC 20-2011(Temp), f. & cert. ef. 10-17-11 thru 4-13-12; DOC 4-2012, f. & cert. ef. 3-1-12; DOC 6-2017, f. & cert. ef. 5-17-17

291-062-0150

Removal or Suspension From an Alternative Incarceration Program

(1) The functional unit manager or designee in his/her discretion may remove or suspend an inmate from any portion of an alternative incarceration program, and may reassign the inmate to another Department of Corrections facility to serve the balance of the inmate's court-imposed incarceration term, for administrative or disciplinary reasons. The decision to remove or suspend an inmate from the program will be made in consultation with a committee appointed by the functional unit manager or designee that is responsible to review the performance of inmates participating in an alternative incarceration program.

(2) Administrative Removal/Suspension:

(a) The functional unit manager or designee in his/her discretion may immediately remove or suspend an inmate from the program and reassign the inmate to another Department of Corrections facility without a hearing, for administrative reasons.

(b) An inmate who is not available to participate substantially in the program (e.g., physical and mental illness, court appearance(s), disciplinary segregation, etc.) for up to 30 days following placement will be suspended from participation and will be evaluated by the committee to determine whether the inmate will be removed from the program or accepted back into the program at the program level deemed appropriate by the functional unit manager or designee.

(c) Any change in status that would cause an inmate to be ineligible to continue participating in the program as described in OAR 291-062-0130 (e.g., discovery of a detainer), may result in a suspension.

(A) If suspended, the inmate will have 30 days to resolve eligibility status with the department. If the inmate's eligibility status remains unresolved, the inmate will be removed from the program.

(B) An extension may be made by the functional unit manager or designee on a case-by-case basis.

(d) If other charges will result in immediate incarceration upon release to nonprison leave, the inmate will have 30 days to resolve eligibility status with the department. If the inmate's eligibility status remains unresolved, the inmate will be removed from the program. An extension may be made by the functional unit manager or designee on a case-by-case basis.

(e) Inmates are expected to participate in all aspects of their program assignment at a level consistent with the length of time they have been assigned to the program.

(A) The functional unit manager or designee in his/her discretion may suspend an inmate from the program for 30 days or more when, in consultation with the program performance review committee, the functional unit manager or designee determines that the inmate is not making adequate program progress. During the suspension, the inmate will be given an opportunity to come into compliance with established program standards.

(B) If the inmate comes into compliance, the inmate will be placed at a program level deemed appropriate by the functional unit manager or designee. The inmate may be removed from the program for failure to meet program expectations. If the inmate is assigned to an intensive alternative incarceration addictions program, the inmate may have the length of the program extended beyond 270 days.

(3) Disciplinary Removal/Suspension: An inmate who after a hearing in accordance with procedures provided in the department's rules on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105) is found to have committed a major disciplinary rule violation may be removed from the program and transferred to another Department

of Corrections facility at the discretion of the functional unit manager or designee.

(4) Voluntary Removal: An inmate may elect to be removed from an alternative incarceration program; however, to do so the inmate must sign a document requesting removal from the program to the functional unit manager or designee. Voluntary removal from the program constitutes a program failure.

(5) An inmate who fails an alternative incarceration program will be ineligible to participate in any other non-AIP intensive treatment program during the same admission cycle (this does not include dual diagnosis programs).

(6) Administrative Review of Removal for Program Failure:

(a) When the functional unit manager or designee removes an inmate from the inmate's program assignment for a program failure, the inmate will be notified in writing of the reason for the removal decision, and given the opportunity for administrative review of the decision.

(b) To obtain an administrative review of the removal decision, an inmate must send a request for administrative review in writing to the Assistant Director for Offender Management and Rehabilitation or designee, together with any supporting documentation. The Assistant Director for Offender Management and Rehabilitation or designee must receive the request within 20 business days of the date of the notice of the administrative removal.

(c) The review should be completed within 20 business days after receiving an inmate's review request. The Assistant Director for Offender Management and Rehabilitation or designee's decision on administrative review shall be final.

Stat. Auth.: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, 423.075

Stats. Implemented: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, 423.075

Hist.: DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04; DOC 5-2004, f. & cert. ef. 7-12-04; DOC 11-2005, f. 8-19-05, cert. ef. 8-22-05; DOC 7-2007, f. & cert. ef. 10-9-07; DOC 3-2009(Temp), f. & cert. ef. 3-20-09 thru 9-11-09; DOC 12-2009, f. & cert. ef. 7-13-09; DOC 6-2017, f. & cert. ef. 5-17-17

291-062-0160

Alternative Incarceration Program Prison Management

(1) To the extent that other Department of Corrections rules may conflict with provisions in these rules (OAR 291-062-0100 to 291-062-0160), such rules are inapplicable to alternative incarceration programs and are modified as provided below to reflect the purposes of alternative incarceration programs and the relatively short period of confinement.

(2) Modified Rules:

(a) Hygiene, Grooming and Sanitation (Inmate) (OAR 291-123) and Personal Property (Inmate) (OAR 291-117): The functional unit managers in the facilities where alternative incarceration programs are provided may establish separate and distinct standards for personal grooming and hygiene as a means to support program goals. Commissary operations and purchases, food services and educational requirements for participants may be modified by those facilities where alternative incarceration programs are offered as a means of supporting program goals. Each facility may develop internal processes for staff and inmates outlining the applicable requirements or restrictions specific to these programs.

(b) Performance Recognition and Award System (PRAS) (OAR 291-077): Inmates assigned to an alternative incarceration program will receive a standard number of points for their PRAS award as determined by the department for work and program participation. Inmates are eligible for special recognition awards pursuant to the department's rules on Performance Recognition and Award System.

(c) Mail (Inmate) (OAR 291-131): Inmates participating in an alternative incarceration program may not be allowed to correspond with inmates housed in general population at the facility where the program is operating.

Stat. Auth.: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, 423.075

Stats. Implemented: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, 423.075

Hist.: DOC 1-2004(Temp), f. & cert. ef. 1-14-04 thru 6-12-04; DOC 5-2004, f. & cert. ef. 7-12-04; DOC 11-2005, f. 8-19-05, cert. ef. 8-22-05; DOC 3-2009(Temp), f. & cert. ef. 3-20-09 thru 9-11-09; DOC 12-2009, f. & cert. ef. 7-13-09; DOC 6-2017, f. & cert. ef. 5-17-17

291-062-0165

Nonprison Leave Violations

(1) For alternative incarceration program participants who violate their conditions of nonprison leave, administrative sanctions/interventions may be imposed in accordance with the department's rules on Structured, Intermediate Sanctions (OAR 291-058).

(2) Revocation of Nonprison Leave

(a) An inmate found in violation while on nonprison leave, may be subject to revocation and be returned to a Department of Corrections facility (OAR 291-105-0069 (1)(e)) and may be subject to other sanctions in

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accordance with the Department of Corrections rules on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

(A) If the inmate's whereabouts are unknown, it shall be the responsibility of the supervising officer to immediately submit a warrant request in writing to the institution functional unit manager or designee. A warrant will be issued in accordance with the Department of Corrections policy. Upon apprehension, it shall be the responsibility of the supervising officer to report the alleged violation and recommended sanction in writing to the institution functional unit manager or designee.

(B) If the inmate's whereabouts are known and the violation is believed to support a revocation of the nonprison leave, it shall be the responsibility of the supervising officer to report the alleged violation in writing to the institution functional unit manager or designee within five working days of the alleged violation.

(b) When revocation of nonprison leave is approved, the releasing authority shall ensure that a misconduct report is submitted in accordance with the department's rules on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

(c) When the inmate is returned to a Department of Corrections facility and a misconduct report is submitted, a hearing shall be conducted in accordance with the Department of Corrections rules on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

(3) For alternative incarceration program participants who fail to successfully complete their period of nonprison leave and receive a revocation, the inmate will be considered a program failure and non-compliant with institution conduct for the length of the inmate's nonprison leave. Their earned time credits shall be computed as outlined in the department's rules on Prison Term Modification (OAR 291-097).

Stat Auth: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, 423.075
Stat Impl: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, 423.075
Hist.: DOC 6-2017, f. & cert. ef. 5-17-17

291-062-0170

Release onto Post-Prison Supervision

(1) For inmates serving a sentence for a crime committed prior to January 1, 2009, upon successfully conforming to directed activities while on nonprison leave, the inmate shall be released to post-prison supervision.

(2) For inmates serving a sentence for a crime committed on or after January 1, 2009, the inmate shall be released to post-prison supervision only if all of the following requirements are met:

(a) The sentencing court has ordered in a judgment that the department may consider the inmate for release to post-prison supervision;

(b) The inmate has served at least one year of the term of incarceration imposed by the sentencing court;

(c) The inmate's release would not reduce the term of incarceration imposed by the court the inmate would otherwise be required to serve by more than 20 percent, minus any earned time credits; and

(d) The inmate has successfully conformed to directed activities while participating in the nonprison leave component of the program.

Stat. Auth.: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, 423.075
Stats. Implemented: ORS 179.040, 421.500 to 421.512, 423.020, 423.030, 423.075
Hist.: DOC 3-2009(Temp), f. & cert. ef. 3-20-09 thru 9-11-09; DOC 12-2009, f. & cert. ef. 7-13-09; DOC 6-2017, f. & cert. ef. 5-17-17

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Rule Caption: Structured, Intermediate Sanctions for Offenders on Community Supervision

Adm. Order No.: DOC 7-2017

Filed with Sec. of State: 5-17-2017

Certified to be Effective: 5-17-17

Notice Publication Date: 7-1-2016

Rules Adopted: 291-058-0047, 291-058-0066, 291-058-0067

Rules Amended: 291-058-0010, 291-058-0020, 291-058-0030, 291-058-0040, 291-058-0045, 291-058-0046, 291-058-0050, 291-058-0060, 291-058-0065, 291-058-0070

Subject: These modifications are necessary to differentiate how counties may sanction inmates on short-term transitional leave vs. inmates on nonprison leave and to align the rules with proposed changes to the rules on short-term transitional leaves (OAR 291-063).

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-058-0010

Authority, Purpose and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with 1993 Or Laws, ch 680,

1997 Or Laws, ch 525, ORS 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 144.600, 144.615, 179.040, 421.168, 421.510, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of this rule is to establish a uniform system of administrative sanctions to address violation behavior of offenders under supervision while on probation, parole or post-prison supervision that may be imposed by the Department of Corrections or a county community corrections agency, taking into consideration the severity of the violation behavior, the prior violation history, the severity of the underlying criminal conviction, the criminal history of the offender, protection of the community, deterrence, the effective capacity of the state prisons and local correctional facilities, and the availability of appropriate local sanctions.

(3) Policy:

(a) It is the policy of the Department of Corrections to compel compliance with the conditions of supervision by responding to violations with swift, certain, and fair interventions. It is the policy of the Department of Corrections that decisions to incarcerate offenders for violation of the conditions of supervision must be made upon a systematic basis that will ensure that available custodial space is used to house those offenders who constitute a threat to the public, taking into consideration the availability of custodial space and local resources.

(b) It is the policy of the Department of Corrections to provide, in conjunction with the Board of Parole and Post-Prison Supervision in accordance with ORS 144.106, 144.346, and OAR 255-075 (Board of Parole and Post-Prison Supervision administrative rules) specific direction for department and county community corrections agency employees to follow when considering administrative sanctioning options for offenders under supervision.

Stat. Auth.: ORS 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 144.600, 144.615, 179.040, 421.168, 421.510, 423.020, 423.030, 423.075
Stats. Implemented: ORS 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 144.600, 144.615, 179.040, 421.168, 421.510, 423.020, 423.030, 423.075
Hist.: CD 24-1993(Temp), f. 9-20-93, cert. ef. 9-27-93; CD 8-1994, f. 3-18-94, cert. ef. 3-29-94; CD 26-1997(Temp), f. & cert. ef. 11-21-97 thru 5-20-98; DOC 11-1998, f. & cert. ef. 5-19-98; DOC 8-2009, f. & cert. ef. 5-29-09; DOC 7-2017, f. & cert. ef. 5-17-17

291-058-0020

Definitions

(1) Administrative Sanctions: Local structured, intermediate sanctions, as those terms are used in ORS 137.592, 137.593, 137.595, 144.106, and 144.346 and in Criminal Justice Commission and Board of Parole and Post-Prison Supervision administrative rules, imposed by the Department of Corrections or a county community corrections agency for violation of conditions of supervision. Administrative sanctions are less than a revocation action and include but are not limited to local confinement in jails, restitution centers, work release centers, treatment facilities, or similar facilities, or community services work, work crew, and house arrest.

(2) Administrative Sanctions Sanctioning Grid: The sentencing grid used to determine an offender's presumptive sentencing guidelines sentence established by rules of the Criminal Justice Commission.

(3) Agency: The Department of Corrections or the county community corrections agency responsible for supervising the offender on parole, post-prison supervision, or probation.

(4) Compact Offender: An offender who resides in and is being supervised by the State of Oregon, although sentenced in another state; Oregon being given the authority to supervise the offender by the rules of the Interstate Compact for Adult Offender Supervision.

(5) Conditions of Probation, Parole, and Post-Prison Supervision: General and specific directives (special conditions) given to an offender placed on probation, parole, or post-prison supervision by the sentencing judge, the Board of Parole and Post-Prison Supervision, or local supervisory authority as a condition of supervision.

(6) Custody/Sanction Units: Custodial conditions of probation/sanctions imposed as a number of custody/sanction units as established by rules of the Criminal Justice Commission including but not limited to jail, restitution centers, work release, house arrest, community service, and inpatient treatment.

(7) Inmate: Any person under the supervision of the Department of Corrections who is not on probation, parole, or post-prison supervision status.

(8) Interventions: Interventions imposed by the Department of Corrections or a county community corrections agency for violations of one or more conditions of supervision. Interventions include but are not limited to verbal reprimand, written reprimand, job search programming, increased reporting requirements, curfew, day reporting, modification of conditions, and outpatient treatment. Intervention responses are not counted as custody units and may be imposed along with sanctions.

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(9) New Criminal Violation: Any conduct constituting a violation of criminal law whether or not it has led to new criminal charge and which has occurred since the offender was placed on community supervision.

(10) Nonprison Leave: A period of leave not to exceed 90 days preceding an established release date granted to inmates successfully completing the institution phase of an alternative incarceration program (AIP). Nonprison leave is designed to provide inmates with transitional opportunities that promote successful reintegration into the community and is granted in accordance with ORS 137.751 and 421.510 and the department's rule on Alternative Incarceration Programs (OAR 291-062).

(11) Offender: Any person under the supervision of the Department of Corrections or a county community corrections agency who is on probation, parole, or post-prison supervision status.

(12) Officer: Any county or state employed parole or probation officer.

(13) Revocation: Termination of supervision as result of violating behavior or a determination by the sentencing court, Board of Parole and Post-Prison Supervision, or local supervisory authority that the purposes of an offender's supervision are not being served.

(14) Releasing Authority: The Department of Corrections, the court, Board of Parole and Post-Prison Supervision, or local supervisory authority.

(15) Risk or Supervision Level: The supervision level assigned to an offender as a result of computation of score utilizing the Public Safety Checklist or PROXY risk instruments.

(16) Short-Term Transitional Leave: A period of leave not to exceed 90 days preceding an established release date designed to provide inmates with transitional opportunities that promote successful reintegration into the community. Short-term transitional leave is granted in accordance with ORS 421.168 and the department's rules on Short-Term Transitional Leave, Emergency Leave, and Supervised Trips (OAR 291-063).

(17) Supervisory Authority: The state and local corrections official or officials designated in each county by that county's Board of County Commissioners or county court to operate corrections supervision services, custodial facilities, or both.

Stat. Auth.: ORS 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 144.600, 144.615, 179.040, 421.168, 421.510, 423.020, 423.030, 423.075

Stats. Implemented: ORS 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 144.600, 144.615, 179.040, 421.168, 421.510, 423.020, 423.030, 423.075

Hist.: CD 24-1993(Temp), f. 9-20-93, cert. ef. 9-27-93; CD 8-1994, f. 3-18-94, cert. ef. 3-29-94; CD 26-1997(Temp), f. & cert. ef. 11-21-97 thru 5-20-98; DOC 11-1998, f. & cert. ef. 5-19-98; DOC 8-2009, f. & cert. ef. 5-29-09; DOC 7-2017, f. & cert. ef. 5-17-17

291-058-0030

Application to Offenders

(1) These rules shall apply to all offenders on probation for a felony committed on or after September 1, 1993, unless the court retained jurisdiction.

(2) These rules shall apply to offenders on probation for a felony committed prior to September 1, 1993, if:

(a) The sentencing judge orders the offender to be subject to the structured, intermediate sanctions sanctioning process; and

(b) The offender consents in writing or on the record to be subject to the structured, intermediate sanctions sanctioning process.

(3) The supervising agency or officer shall present offenders on probation for a felony committed prior to September 1, 1993, with the option of consenting to be subject to the structured, intermediate sanctions sanctioning process for violation of conditions of probation supervision. Offenders may consent in writing to be subject to the structured, intermediate sanctions sanctioning process by signing a Structured, Intermediate Sanctions Sanctioning Process Consent form (CD 1274). The supervising agency/officer shall present an offender's written consent to be subject to the structured, intermediate sanctions sanctioning process to the sentencing court for the court's approval and signature.

(4) These rules apply to all offenders on parole and post-prison supervision and all compact offenders supervised in Oregon.

(5) These rules apply to all inmates on short-term transitional leave with specific limitations set forth in OAR 291-058-0046.

(6) These rules apply to all inmates on nonprison leave with specific limitations set forth in OAR 291-058-0047.

Stat. Auth.: ORS 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 144.600, 144.615, 179.040, 421.168, 421.510, 423.020, 423.030, 423.075

Stats. Implemented: ORS 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 144.600, 144.615, 179.040, 421.168, 421.510, 423.020, 423.030, 423.075

Hist.: CD 24-1993(Temp), f. 9-20-93, cert. ef. 9-27-93; CD 8-1994, f. 3-18-94, cert. ef. 3-29-94; CD 26-1997(Temp), f. & cert. ef. 11-21-97 thru 5-20-98; DOC 11-1998, f. & cert. ef. 5-19-98; DOC 8-2009, f. & cert. ef. 5-29-09; DOC 7-2017, f. & cert. ef. 5-17-17

291-058-0040

Identification and Presentation of Violation Behavior

(1) Upon identifying violation behavior, the officer will prepare and present to the offender a copy of the Violation Report/Sanction Reporting form describing the alleged violation behavior.

(2) Notice of Rights/Decisions about Rights:

(a) Probation Cases: Using the Department of Corrections Notice of Rights form, the offender shall be notified of his/her rights to a violation hearing before the court, and to be represented by an attorney at the hearing and to have an attorney appointed for him/her at state expense if he/she cannot afford one.

(b) Parole and Post-Prison Supervision Cases: Using the Board of Parole and Post-Prison Supervision or local supervisory authority Notice of Rights form for parole and post-prison supervision offenders, the offender shall be notified of his/her rights to a violation hearing before the Board or local supervisory authority.

(c) Compact Cases: Using the Compact Notice of Rights form for compact offenders, the offender shall be notified of his/her rights to a violation hearing before an assigned hearings officer.

(d) Short-Term Transitional Leave and Nonprison Leave Cases: Using the Department of Corrections Notice of Rights form, the inmate shall be notified of his/her rights to a violation hearing before an assigned hearings officer upon return to a Department of Corrections facility.

(A) All Notice of Rights forms shall include a description of the sanction which will be imposed if the offender chooses to waive his/her right to a violation hearing and right to counsel, and in lieu of a violation hearing elects to participate in the administrative sanctioning process.

(B) A copy of the Notice of Rights form shall be provided to the offender at the time of or after the offender is presented with a copy of the Violation Report/Sanction Reporting form describing the alleged violation behavior, and prior to the imposition of sanctions. The Notice of Rights may be administered by any agency personnel or other person at the direction of agency personnel.

(e) The person administering the Notice of Rights shall ask the offender if he/she can read and understand the Notice of Rights form printed in the English language. If the offender informs the person administering the Notice of Rights that he/she cannot read the form, but can understand the English language, the person shall read the Notice of Rights form to the offender. If the offender informs the person administering the Notice of Rights that he/she cannot read or understand the English language, the person shall provide the offender with a form in the offender's language if available, or when necessary, a language interpreter.

(f) If, after receiving Notice of Rights in writing or orally as necessary, the offender indicates to the person administering the Notice of Rights that he/she understands his/her rights as stated in the Notice of Rights form, the offender shall sign the Notice of Rights form acknowledging that the offender understands his/her rights, and indicate by checking the appropriate box on the form whether he/she wants a violation hearing before the court, Board of Parole and Post-Prison Supervision, Department of Corrections, or local supervisory authority or to accept the administrative sanction listed on the form. If an offender refuses to sign the form acknowledging he/she has read, or has had read to him/her, and understands the Notice of Rights, the person administering the Notice of Rights shall so indicate on the Notice of Rights form, and the officer shall report the violation behavior to the court, Board of Parole and Post-Prison Supervision, Department of Corrections, or local supervisory authority for disposition in lieu of proceeding with the administrative sanctioning process.

(g) If, after receiving Notice of Rights in writing or orally as necessary, the offender indicates to the person administering the Notice of Rights that he/she does not understand his/her rights as stated in the Notice of Rights form, the officer shall report the violation behavior to the court, Board of Parole and Post-Prison Supervision, Department of Corrections, or local supervisory authority for disposition in lieu of proceeding with the administrative sanctioning process. For compact cases, a probable cause hearing shall be scheduled with an assigned hearings officer.

(h) If the offender admits to the alleged violation behavior or does not contest the information regarding the alleged violation behavior and the offender accepts the administrative sanction to be imposed by the sanctioning agent as listed on the form, the sanctioning agent shall impose the administrative sanction.

(i) If the offender denies or otherwise contests the alleged violation behavior, or does not accept the administrative sanction to be imposed by the sanctioning agent as listed on the form, the officer shall report the violation behavior to the court, Board of Parole and Post-Prison Supervision, Department of Corrections, or local supervisory authority for disposition in

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lieu of proceeding with the administrative sanctioning process. For compact cases, a probable cause hearing shall be scheduled with an assigned hearings officer.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 144.600, 144.615, 179.040, 421.168, 421.510, 423.020, 423.030, 423.075
Stats. Implemented: ORS 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 144.600, 144.615, 179.040, 421.168, 421.510, 423.020, 423.030, 423.075
Hist.: CD 24-1993(Temp), f. 9-20-93, cert. ef. 9-27-93; CD 8-1994, f. 3-18-94, cert. ef. 3-29-94; CD 26-1997(Temp), f. & cert. ef. 11-21-97 thru 5-20-98; DOC 11-1998, f. & cert. ef. 5-19-98; DOC 8-2009, f. & cert. ef. 5-29-09; DOC 7-2017, f. & cert. ef. 5-17-17

291-058-0045

Imposition of Administrative Sanctions/Interventions on Offenders

(1) The officer shall determine whether the alleged violation behavior is appropriately responded to with interventions or with structured, intermediate sanctions, or both.

(2) If the officer determines that the alleged violation behavior is appropriately responded to with intervention, the officer may direct the offender into appropriate interventions outside of the administrative sanctioning process as authorized by the supervising agency.

(3) If the officer determines that the alleged violation behavior is appropriately responded to with administrative sanctions, the officer shall determine and impose appropriate administrative sanctions using the Administrative Sanctions Sanctioning Grid (Attachment A) and the Sanction Equivalency Table (Attachment B), and the following procedures:

(a) Identify the seriousness of the violation behavior using the Administrative Sanctions Sanctioning Grid. For a series of violations, select the violation that fits into the highest behavior level.

(b) If the offender has violated conditions of supervision imposed in more than one case (i.e., multiple cases from a single jurisdiction, cases from multiple jurisdictions, or on supervision for parole/post-prison supervision and probation), determine the grid block section that applies to the criminal conviction in the case to which the administrative sanction will be imposed. An administrative sanction or intervention at the agency level cannot be imposed on more than one case at a time, and cases cannot be sanctioned separately for individual violations arising from a series of violations.

(c) If the offender is under supervision for conviction of a felony crime committed on or after November 1, 1989, determine the section that contains the Sentencing Guidelines Grid block assigned to the offender at sentencing. If the offender is under supervision for a felony crime committed prior to November 1, 1989, (pre-sentencing guidelines) or is a compact case being supervised in Oregon, determine the grid block section that would have applied to the underlying felony conviction had the offender been sentenced under sentencing guidelines.

(d) Identify the offender's current supervision level.

(e) For probation cases, determine the number of jail and non-jail custody/sanction units remaining for use as structured, intermediate sanctions applicable to the offender's probationary sentence or order. There is no limit to the amount of total sanction time that can be imposed during a period of parole or post-prison supervision or on compact cases.

(f) Determine the range of custody/sanction units which may be imposed by cross indexing the violation behavior category, Sentencing Guidelines Grid block, and the offender's supervision level at the time of the violation behavior.

(g) Determine the appropriate sanction to impose. Sanctions may not exceed the maximum number of custody/sanction units as indicated on the Administrative Sanctions Sanctioning Grid, using the Sanction Equivalency Table.

(h) If the indicated level of sanction response is considered insufficient to address the seriousness of the violation behavior, a higher level of sanction, up to and including returning an offender to court or the Board of Parole and Post-Prison Supervision, may be imposed only after consultation and agreement of the unit supervisor or approval process established by the county agency or local supervisory authority. For revocation recommendations submitted under this section of rule, an offender may be returned to court or the Board of Parole and Post-Prison Supervision only after consultation with the unit supervisor and the agreement of the local supervisory authority or designee.

(i) Level of Authority for Probation Cases: Determine the level of authority that may impose the sanction (agency or court). Jail confinement imposed as an administrative sanction may not exceed 60 days per violation report. The total number of days of jail confinement for all violation reports per conviction may not exceed the maximum number of available jail custody/sanction units as provided by rules of the Criminal Justice

Commission. The officer shall follow agency policy for supervisory review when imposing jail confinement sanctions.

(A) If the appropriate sanction falls within the agency level designation, the officer shall impose the sanction following agency procedures for consultation with supervisory personnel.

(B) If the appropriate sanction falls within the court level designation, the officer may impose a sanction from the agency level designation or report the violation behavior to the court with a recommendation that the appropriate sanction from the court level designation be imposed.

(C) If the offender has previously served all of the available custody/sanction units applicable to his/her probationary sentence or order, the officer may order appropriate interventions or report the violation to the court for disposition.

(j) Level of Authority for Parole and Post-Prison Supervision and Compact Cases: Determine the level of authority that may impose the sanction (i.e., supervising officer, hearings officer or other agency designee, Board of Parole and Post-Prison Supervision, local supervisory authority, or releasing authority for compact cases).

(A) A supervising officer may order local sanctions including a local confinement sanction not exceeding 30 days.

(B) A hearings officer or agency designee may order local sanctions including a local confinement sanction not exceeding 60 days.

(C) The Board of Parole and Post-Prison Supervision, local supervisory authority, or releasing authority in the state of conviction for compact cases may order administrative sanctions not exceeding 90 days.

(D) Revocation Sanctions: If structured sanctions are not felt sufficient to manage the offender, the local supervisory authority or the Board shall hold a hearing to determine whether incarceration is appropriate and may impose an appropriate revocation term of incarceration in compliance with the Oregon Criminal Justice Commission rules (OAR 213-005-0004) and the Board of Parole and Post-Prison Supervision rules (OAR 255-075).

(E) Revocation Sanctions for Compact Cases: If structured sanctions are not felt sufficient to manage the offender, the supervising officer shall prepare a compact violation report detailing the alleged violation and recommending the offender's return to the sending state to address the violation behavior. A revocation sanction shall never be imposed on a compact offender.

(F) An offender ordered to serve a term of incarceration following revocation for a post-prison supervision violation is not eligible for earned credit time or transitional leave.

(G) An offender ordered to serve a term of prison incarceration as a sanction for a post-prison supervision violation shall receive credit for time served in a state or local correctional facility on the supervisory violation prior to the Board's imposition of a prison term sanction.

(4) Level of Authority for Short-Term Transitional Leave Cases: Determine the level of authority that may impose the sanction (i.e., supervising officer, hearings officer or other agency designee, or releasing authority).

(A) A supervising officer may order local sanctions including a local confinement sanction not exceeding 30 days.

(B) A hearings officer or agency designee may order local sanctions including a local confinement sanction not exceeding 60 days.

(C) The releasing authority may order sanctions up to and including revocation of leave and return to a Department of Corrections facility.

(D) Any local confinement sanctions shall be reported to the releasing authority in accordance with OAR 291-058-0066.

(5) Level of Authority for Nonprison Leave Cases: Determine the level of authority that may impose the sanction (i.e., supervising officer, hearings officer or other agency designee, or releasing authority).

(A) A supervising officer may order local sanctions including a local confinement sanction not exceeding three days.

(B) A hearings officer or agency designee may order local sanctions including a local confinement sanction not exceeding three days.

(C) The releasing authority may order sanctions up to and including revocation of leave and return to a Department of Corrections facility.

(D) All sanctions shall be reported to the releasing authority in accordance with OAR 291-058-0067.

(6) Nothing in these rules shall limit the authority of the officer and supervising agency to direct the offender into appropriate interventions outside of the administrative sanctioning process.

(7) Sanctioning of Offenders Held in Jail on Officer's Detainer for Violation of Probation Conditions:

(a) When an offender is arrested and detained in a county jail on authority of an officer's detainer for a violation of the conditions of probation, the officer shall complete the imposition of administrative sanction

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within the first 36 hours of the offender's detention, excluding Saturdays, Sundays, and holidays, unless later disposition is authorized by supervisory personnel. Agency supervisory personnel, in consultation with the jail supervisory personnel, may authorize an extension of the 36-hour period for up to five judicial days if the officer is unable to collect the necessary information or meet with the offender within the 36-hour period.

(b) If the imposition of administrative sanctions is not completed within the authorized period, the officer shall notify the jail supervisor and remove his/her detainee lodged with the county jail authority. Nothing in these rules shall prohibit an officer from issuing a new detainee for the offender's arrest and detention for a violation of the conditions of probation upon receipt of the information necessary for the officer to assess the full nature and extent of the violation, and impose appropriate administrative sanctions.

(c) If the offender does not consent to administrative sanctions imposed by the officer, the officer, as soon as practicable but within one judicial day, shall report the arrest or detention to the court that imposed the probation. The officer shall promptly submit to the court a report showing in what manner the offender has violated the conditions of probation.

(8) Sanctioning of offenders held in jail on officer's detainee for violations of parole or post-prison supervision, short-term transitional leave, or nonprison leave conditions: Within 15 days of the offender's arrest, either a structured sanction must be imposed or violation hearing proceedings initiated.

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

Stat. Auth.: ORS 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 144.600, 144.615, 179.040, 421.168, 421.510, 423.020, 423.030, 423.075

Stats. Implemented: ORS 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 144.600, 144.615, 179.040, 421.168, 421.510, 423.020, 423.030, 423.075

Hist.: CD 26-1997(Temp), f. & cert. ef. 11-21-97 thru 5-20-98; DOC 11-1998, f. & cert. ef. 5-19-98; DOC 6-2001, f. & cert. ef. 2-7-01; DOC 13-2001, f. & cert. ef. 7-11-01; DOC 11-2002, f. & cert. ef. 8-1-02; DOC 8-2009, f. & cert. ef. 5-29-09; DOC 7-2017, f. & cert. ef. 5-17-17

291-058-0046

Imposition of Administrative Sanctions/Interventions on Short-Term Transitional Leave Inmates

(1) The process to impose administrative sanctions or interventions on inmates on short-term transitional leave shall be the same as for offenders on probation, parole, post-prison supervision, and compact cases with the restrictions listed in subsections (2) through (3) below.

(2) If an inmate does not consent to the administrative sanctions or interventions imposed by the officer, the officer, as soon as practicable but within five days, shall report the violation to the Assistant Director of Community Corrections or designee in accordance with the department's rule on Short-Term Transitional Leave, Emergency Leave, and Supervised Trips; specifically OAR 291-063-0160.

(3) If the indicated level of sanction response is considered to be insufficient to address the seriousness of the violation behavior, a higher level of sanction, up to and including revocation of short-term transitional leave and returning the inmate to a Department of Corrections facility, may be imposed only after consultation and agreement of the Assistant Director of Community Corrections or designee. For revocation of short-term transitional leave recommendations submitted under this section, supervising officers shall use the process outlined in OAR 291-063-0160.

Stat. Auth.: ORS 137.595, 179.040, 421.168, 423.020, 423.030, 423.075

Stats. Implemented: ORS 137.595, 179.040, 421.168, 423.020, 423.030, 423.075

Hist.: DOC 8-2009, f. & cert. ef. 5-29-09; DOC 16-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; DOC 2-2010, f. & cert. ef. 2-24-10; DOC 7-2017, f. & cert. ef. 5-17-17

291-058-0047

Imposition of Administrative Sanctions/Interventions on Nonprison Leave Inmates

(1) The process to impose administrative sanctions or interventions on inmates on nonprison leave shall be the same as for offenders on probation, parole, post-prison supervision, and compact cases with the restrictions listed in subsections (2) through (7) below.

(2) Only violations in the "System Response"; "Behavior Level 1"; and "Behavior Level 2" columns on the Administrative Sanctions Sanctioning Grid (Attachment A) shall be addressed with an administrative sanction or intervention response.

(3) Violations found to be in the "Behavior Level 3" of Attachment A shall be addressed in accordance with the department's rule on Alternative Incarceration Programs, specifically OAR 291-062-0165(2).

(4) If an inmate does not consent to the administrative sanctions or interventions imposed by the officer, the officer, as soon as practicable, but within five days, shall report the violation to the institution functional unit manager or designee in accordance with the department's rule on Alternative Incarceration Programs; specifically OAR 291-062-0165(2).

(5) If the indicated level of sanction response is considered to be insufficient to address the seriousness of the violation behavior, a higher level of sanction, up to and including revocation of nonprison leave and returning the inmate to a Department of Corrections facility, may be imposed only after consultation and agreement of the institution functional unit manager or designee. For revocation of nonprison leave recommendations submitted under this section, supervising officers shall use the process outlined in OAR 291-062-0165.

(6) Section 3 Crime Seriousness/Criminal History Grid (1, 2, 3, 4C-4I, 5G-5I) on Attachment A shall be used for all inmates on nonprison leave regardless of where they would be placed on the Sentencing Guidelines Grid.

(7) Use of jail sanctions for inmates on nonprison leave from an alternative incarceration program must be agreed upon by both Department of Corrections and the local county. A jail sanction cannot exceed three days. Credit for sanction units for work crew, community service, restitution or work release centers, and house arrest shall be distributed according to Attachment B.

Stat Auth: ORS 137.595, 179.040, 421.510, 423.020, 423.030, and 423.075

Stat Impl: ORS 137.595, 179.040, 421.510, 423.020, 423.030, and 423.075

Hist.: DOC 7-2017, f. & cert. ef. 5-17-17

291-058-0050

Reporting of Sanctions for Probation Cases/Role of Court and District Attorney

(1) Whenever administrative sanctions are imposed, the sentencing court and the district attorney on probation cases shall be notified utilizing the Department of Corrections Violation Report/Sanction Reporting form. When a probation intervention/ sanction involves modifying conditions of probation, the court must sign and return the request before the amended condition is in effect, unless specific authority has been granted to the community corrections agency by the sentencing court.

(2) Notification shall be sent via facsimile where available during the same working day in which a sanction is imposed. Where facsimile is not available, notification shall be mailed the same working day in which the sanction is imposed.

(3) Prior to the imposition of any administrative sanction or within four judicial days after receiving notice that a structured, intermediate sanction has been imposed on a probationer, the court, upon motion of the district attorney or on its own motion, may cause the offender to be brought before the court for a hearing and may revoke probation, impose such other or additional sanctions, or modify the conditions of probation as authorized by law. In no case may the sentencing judge cause an offender to be brought before the court for a hearing and revoke probation or impose other or additional sanctions after the probationer has completed a structured, intermediate sanction imposed by the Department of Corrections or a county community corrections agency.

Stat. Auth.: ORS 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 179.040, 423.030, 423.075

Stats. Implemented: ORS 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 179.040, 423.030, 423.075

Hist.: CD 24-1993(Temp), f. 9-20-93, cert. ef. 9-27-93; CD 8-1994, f. 3-18-94, cert. ef. 3-29-94; CD 26-1997(Temp), f. & cert. ef. 11-21-97 thru 5-20-98; DOC 11-1998, f. & cert. ef. 5-19-98; DOC 8-2009, f. & cert. ef. 5-29-09; DOC 7-2017, f. & cert. ef. 5-17-17

291-058-0060

Reporting of Sanctions for Parole and Post-Prison Supervision Cases/Role of Supervisory Authority and Board of Parole and Post-Prison Supervision

(1) Whenever administrative sanctions are imposed, the supervisory authority or the Board of Parole and Post-Prison Supervision shall be notified utilizing the Department of Corrections Violation Report/Sanction Reporting form.

(2) When custody is imposed or conditions of supervision are modified, a completed Sanction Reporting form and Notice of Rights notification will be submitted to the local supervisory authority or the Board of Parole and Post-Prison Supervision.

(3) Notification shall be sent utilizing the automated structured sanction module within the Corrections Information System whenever possible or via facsimile where available during the same working day in which a sanction is imposed. Where facsimile is not available, notification shall be mailed the same working day in which the sanction is imposed.

Stat. Auth.: ORS 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 179.040, 423.030, 423.075

Stats. Implemented: ORS 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 179.040, 423.030, 423.075

Hist.: CD 26-1997(Temp), f. & cert. ef. 11-21-97 thru 5-20-98; DOC 11-1998, f. & cert. ef. 5-19-98; DOC 8-2009, f. & cert. ef. 5-29-09; DOC 7-2017, f. & cert. ef. 5-17-17

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291-058-0065

Reporting of Sanctions for Compact Cases/Role of the Oregon Interstate Compact Office

(1) Whenever administrative sanctions are imposed, conditions of supervision are modified, or custody is imposed for a significant violation as defined by the compact rules, the sending state may be notified utilizing the compact violation report form. A completed Sanction Reporting form and Notice of Rights notification may be included with the compact violation report form.

(2) Notification shall be sent within 30 days of the violation to the Oregon Interstate Compact office utilizing the Interstate Compact Offender Tracking System.

Stat. Auth.: ORS 144.600, 144.615, 179.040, 423.020, 423.030, 423.075
Stats. Implemented: ORS 144.600, 144.615, 179.040, 423.020, 423.030, 423.075
Hist.: DOC 8-2009, f. & cert. ef. 5-29-09; DOC 7-2017, f. & cert. ef. 5-17-17

291-058-0066

Reporting of Sanctions for Short-Term Transitional Leave Cases/Role of the Department of Corrections Community Corrections Division Office

(1) Whenever jail sanctions are imposed, a completed Short-Term Transitional Leave Violation Report form and Notice of Rights will be submitted to the Assistant Director of Community Corrections or designee.

(2) Notification shall be sent electronically during the same working day in which the sanction is imposed.

(3) The Assistant Director of Community Corrections or designee shall have the override authority of other releasing authorities and may override the given sanction at any time without time limitations.

Stat. Auth.: ORS 137.595, 179.040, 421.168, 423.020, 423.030, 423.075
Stats. Implemented: ORS 137.595, 179.040, 421.168, 423.020, 423.030, 423.075
Hist.: DOC 7-2017, f. & cert. ef. 5-17-17

291-058-0067

Reporting of Sanctions for Nonprison Leave Cases/Role of the Department of Corrections Offender Management and Rehabilitation Division Office

(1) Whenever administrative or jail sanctions are imposed, the completed sanction report and Notice of Rights shall be forwarded to the institution functional unit manager or designee at the releasing institution.

(2) Notification shall be sent electronically during the same working day in which the sanction is imposed.

(3) The institution functional unit manager or designee shall have the override authority of other releasing authorities and may override the given sanction at any time without time limitations.

Stat. Auth.: ORS 137.595, 179.040, 421.168, 423.020, 423.030, 423.075
Stats. Implemented: ORS 137.595, 179.040, 421.168, 423.020, 423.030, 423.075
Hist.: DOC 7-2017, f. & cert. ef. 5-17-17

291-058-0070

Misdemeanor Cases

Nothing in these rules shall limit the authority of county corrections agency from developing their own structured sanctioning process for misdemeanor cases.

Stat. Auth.: ORS 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 179.040, 423.030, 423.075
Stats. Implemented: ORS 137.592, 137.593, 137.595, 144.104, 144.106, 144.108, 179.040, 423.020, 423.030, 423.075
Hist.: CD 26-1997(Temp), f. & cert. ef. 11-21-97 thru 5-20-98; DOC 11-1998, f. & cert. ef. 5-19-98; DOC 7-2017, f. & cert. ef. 5-17-17

Rule Caption: Confidentiality and Inadmissibility of Workplace Interpersonal Mediation Communications

Adm. Order No.: DOC 8-2017

Filed with Sec. of State: 6-8-2017

Certified to be Effective: 6-8-17

Notice Publication Date:

Rules Amended: 291-001-0110

Subject: Pursuant to ORS 36.224(4), amending the Oregon Department of Corrections' Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications OAR 291-001-0110 to adopt by reference the Confidentiality and Inadmissibility of Workplace Interpersonal Mediation Communications rule OAR 137-005-0054 adopted by the Attorney General effective as of 10-27-15.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-001-0110

Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

(1) This rule applies to workplace interpersonal disputes, which are disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials. This rule does not apply to disputes involving the negotiation of labor contracts or matters about which a tort claim notice or a lawsuit has been filed.

(2) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(3) Nothing in this rule affects any confidentiality created by other law.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or,

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c) or (h)–(l) of section (7) of this rule.

(6) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in section (7) of this rule, mediation communications in mediations involving workplace interpersonal disputes are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced into evidence by the parties or the mediator in any subsequent proceeding so long as:

(a) The parties to the mediation and the agency have agreed in writing to the confidentiality of the mediation; and

(b) The person agreeing to the confidentiality of the mediation on behalf of the agency:

(A) Is neither a party to the dispute nor the mediator; and

(B) Is designated by the agency to authorize confidentiality for the mediation; and

(C) Is at the same or higher level in the agency than any of the parties to the mediation or who is a person with responsibility for human resources or personnel matters in the agency, unless the agency head or member of the governing board is one of the persons involved in the interpersonal dispute, in which case the Governor or the Governor's designee.

(7) Exceptions to Confidentiality and Inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(e) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person

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for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(f) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(g) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(h) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements

(i) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(j) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232.

(k) Any mediation communication relating to child abuse that is made to a person required to report abuse under ORS 419B.010 is not confidential to the extent that the person is required to report the communication.

(l) Any mediation communication relating to elder abuse that is made to a person who is required to report abuse under ORS 124.050 to 124.095 is not confidential to the extent that the person is required to report the communication.

(8) The terms of any agreement arising out of the mediation of a workplace interpersonal dispute are confidential so long as the parties and the agency so agree in writing. Any term of an agreement that requires an expenditure of public funds, other than expenditures of \$1,000 or less for employee training, employee counseling or purchases of equipment that remain the property of the agency, may not be made confidential.

(9) When a mediation is subject to section (6) of this rule, the agency will provide to all parties to the mediation and to the mediator a copy of this rule or an explanation of where a copy of the rule may be obtained. The mediation confidentiality agreement must also refer to this rule. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224

Stats. Implemented: ORS 36.230

Hist.: DOC 4-2007, f. & cert. ef. 7-20-07; DOC 8-2017, f. & cert. ef. 6-8-17

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Rule Caption: Short-Term Transitional Leave for Inmates in DOC Facilities

Adm. Order No.: DOC 9-2017

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Rules Adopted: 291-063-0130, 291-063-0150, 291-063-1000, 291-063-1010

Rules Repealed: 291-063-0030(T)

Rules Ren. & Amend: 291-063-0005 to 291-063-0100, 291-063-0010 to 291-063-0110, 291-063-0016 to 291-063-0120, 291-063-0030 to 291-063-0140, 291-063-0036 to 291-063-0160, 291-063-0050 to 291-063-1020, 291-063-0040 to 291-063-1030, 291-063-0060 to 291-063-1040

Subject: These modifications are necessary to incorporate legislative changes to the short-term transitional leave (STTL) program as a result of HB 3194 (2013), update the process of how inmates are identified and approved for STTL, and clarify which inmates are eligible for participation in STTL. These revisions also include house-

keeping matters to separate the STTL rules from those applicable to emergency leave and supervised trips.

Rules Coordinator: Janet R. Worley—(503) 945-0933

291-063-0100

Short-Term Transitional Leave - Authority, Purpose, and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 421.168, 423.020, 423.030, and 423.075

(2) Purpose: To provide uniform procedures, standards, and guidelines for granting or denying short-term transitional leave and to establish supervisory standards for such leaves.

(3) Policy:

(a) It is the policy of the Department of Corrections, pursuant to 421.168, to allow inmates short-term transitional leave from correctional facilities when circumstances indicate leave would be in accordance with generally accepted correctional and rehabilitation practices and enough time exists to prepare an appropriate transitional leave release plan as determined by the releasing authority.

(b) These rules do not apply to inmates:

(A) Releasing from a DOC facility with no subsequent post-prison supervision; or

(B) Housed in an Oregon Youth Authority facility.

Stat Auth.: ORS 179.040, 421.168, 423.020, 423.030, 423.075

Stats. Implemented: ORS 179.040, 421.168, 423.020, 423.030, 423.075

Hist.: CD 1-1990, f. & cert. ef. 1-29-90; CD 21-1990(Temp), f. & cert. ef. 11-1-90; CD 11-1991, f. & cert. ef. 4-24-91; DOC 8-2003(Temp), f. & cert. ef. 4-17-03 thru 10-13-03; DOC 15-2003, f. 10-3-03, cert. ef. 10-4-03; Renumbered from 291-063-0005, DOC 9-2017, f. 6-8-17, cert. ef. 6-12-17

291-063-0110

Definitions for OAR 291-063-0100 to 291-063-0160

(1) Department of Corrections Facility: Any institution, facility or staff office, including the grounds, operated by the Department of Corrections.

(2) Employee: Any person employed full-time, part-time or under temporary appointment by the Department of Corrections.

(3) Immediate Family Member: Spouse, domestic partner, parent, sibling, child, aunt, uncle, niece, nephew, grandchildren, and grandparents including foster, in-law, and step-relationships. Immediate family also includes the caregiver of the inmate's minor child.

(4) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, post-prison supervision, or probation status.

(5) Nonprison Leave: A period of leave not to exceed 90 days preceding an established release date granted to inmates successfully completing the institution phase of an Alternative Incarceration Program (AIP). Nonprison leave is designed to provide inmates with transitional opportunities that promote successful reintegration into the community and is granted in accordance with ORS 137.751, 421.508, and 421.510, and the department's rules on Alternative Incarceration Program (OAR 291-062).

(6) Predatory Sex Offender: A special designation made by the supervisory authority in accordance with former ORS 181.507 or 181.585.

(7) Releasing Authority: The Assistant Director of the Community Corrections Division or designee.

(8) Sexually Violent Dangerous Offender: A special designation made by the court under ORS 137.765 and the Board of Parole and Post-Prison Supervision or local supervisory authority under ORS 144.635.

(9) Short-Term Transitional Leave: A period of leave not to exceed 90 days preceding an established release date designed to provide inmates with transitional opportunities that promote successful reintegration into the community. Short-term transitional leave is granted in accordance with ORS 421.168.

(10) Term of Incarceration: The period of commitment to the legal and physical custody of the department imposed by a sentencing court in a judgement. For purposes of these administrative rules, "term of incarceration" includes pre-sentence incarceration credit granted to an inmate by the department under ORS 137.370, as well as any time an inmate spends on short-term transitional leave under ORS 421.168 or nonprison leave under ORS 421.510.

(11) Tier III Sex Offender: A special designation made by the Board of Parole and Post-Prison Supervision in accordance with OAR 255-085-0010 to 255-085-0050.

Stat Auth.: ORS 179.040, 421.168, 423.020, 423.030, 423.075

Stats. Implemented: ORS 179.040, 421.168, 423.020, 423.030, 423.075

Hist.: CD 1-1990, f. & cert. ef. 1-29-90; CD 21-1990(Temp), f. & cert. ef. 11-1-90; CD 11-1991, f. & cert. ef. 4-24-91; DOC 8-2003(Temp), f. & cert. ef. 4-17-03 thru 10-13-03; DOC 15-2003, f. 10-3-03, cert. ef. 10-4-03; DOC 17-2005, f. 12-30-05, cert. ef. 1-1-06; DOC 17-

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2010(Temp), f. 11-23-10, cert. ef. 12-1-10 thru 5-30-11; DOC 10-2011, f. & cert. ef. 6-2-11; Renumbered from 291-063-0010, DOC 9-2017, f. 6-8-17, cert. ef. 6-12-17

291-063-0120

Procedures

(1) Sentencing Restrictions on Eligibility:

(a) Persons incarcerated for parole revocation sanctions shall not be eligible for short-term transitional leave.

(b) Persons incarcerated for post-prison supervision revocation sanctions shall not be eligible for short-term transitional leave pursuant to ORS 144.108(3)(b).

(c) Any person serving a sentence for a crime committed prior to November 1, 1989 (matrix offense), shall not be eligible for short-term transitional leave.

(d) Any person serving a sentence under the provisions of ORS 161.610 (using a firearm during the commission of a felony) shall not be eligible for short-term transitional leave until the person has served the minimum incarceration term imposed by the court less earned time under ORS 421.121.

(e) Any person serving a sentence under the provisions of ORS 161.725 to 161.737 (dangerous offenders) shall not be eligible for short-term transitional leave even if the Board of Parole and Post-Prison Supervision finds that the condition that made the person dangerous is absent or in remission and sets a post-prison supervision release date.

(f) Any person serving a sentence under the provisions of ORS 137.635, 137.700, and 137.707 shall not be eligible for short-term transitional leave regardless of the date the crime was committed.

(g) With the exception of sentences covered in subsection (h) of this section, a person shall not be eligible to participate in short-term transitional leave during service of a sentence for conviction of a crime listed below:

(A) ORS 163.095 (Aggravated, Attempted Aggravated, or Conspiracy to Commit Aggravated Murder),

(B) ORS 163.115 (Murder, Attempted Murder, or Conspiracy to Commit Murder),

(C) ORS 163.118 (Manslaughter I),

(D) ORS 163.125 (Manslaughter II)

(E) ORS 163.175 (Assault II)

(F) ORS 163.185 (Assault I),

(G) ORS 163.149 (Aggravated Vehicular Homicide),

(H) ORS 163.225 (Kidnapping II)

(I) ORS 163.235 (Kidnapping I),

(J) ORS 163.365 (Rape II),

(K) ORS 163.375 (Rape I),

(L) ORS 163.395 (Sodomy II),

(M) ORS 163.405 (Sodomy I),

(N) ORS 163.408 (Unlawful Sexual Penetration II),

(O) ORS 163.411 (Unlawful Sexual Penetration I),

(P) ORS 163.427 (Sexual Abuse I),

(Q) ORS 163.670 (Use of a Child in Display of Sexually Explicit Conduct),

(R) ORS 164.325 (Arson I),

(S) ORS 164.405 (Robbery II)

(T) ORS 164.415 (Robbery I), or

(U) ORS 167.017 (Compelling Prostitution).

(h) A person is eligible for short-term transitional leave during service of a sentence for conviction of the following crimes after conditions are met as outlined in ORS 137.712:

(A) Any person serving a sentence under the provisions of ORS 137.712 for Robbery II, Kidnapping II, or Assault II committed:

(i) On or after April 1, 1995 and prior to December 5, 1996 is eligible for short-term transitional leave.

(ii) On or after December 5, 1996 is eligible for short-term transitional leave only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(B) Any person serving a sentence under the provisions of ORS 137.712 for Manslaughter II committed on or after October 23, 1999 is eligible for short-term transitional leave only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(C) Any person serving a sentence under the provisions of ORS 137.712 for Rape II, Sodomy II, Unlawful Sexual Penetration II, or Sex Abuse I committed on or after January 1, 2002 is eligible for short-term transitional leave only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(D) If otherwise eligible under Oregon law, any person serving a sentence for a crime committed on or after December 5, 1996, shall be eligible

for short-term transitional leave only upon order of the sentencing court as directed in the judgment pursuant to ORS 137.750.

(2) Additional Eligibility Requirements: An inmate who meets the sentencing eligibility requirements as referenced in (1) above may be approved for short-term transitional leave if he/she meets the following criteria:

(a) Incarcerated for at least six months, including applicable county jail time credits, before being eligible for short-term transitional leave.

(b) Be classified as minimum (Level 1 or Level 2) custody in accordance with the Department of Corrections rules on Classification (Inmate) (OAR 291-104);

(c) Shall reside within the State of Oregon through the full term of short-term transitional leave;

(d) Does not have a current detainer or other charges that would result in incarceration upon release to short-term transitional leave;

(e) Has not been found guilty of any Level 1 or 2 major violations of prohibited conduct within 15 months of the inmate's projected release date;

(f) Has not received a Failure of Corrections Plan (FOCP) within 15 months of the inmate's projected release date;

(g) Has not already failed nonprison or short-term transitional leave during the current term of incarceration or the term immediately preceding the current term of incarceration;

(h) Has not been designated as a Sexually Violent Dangerous Offender, Predatory Sexual Offender, or classified as a Tier III sex offender; and

(i) Is currently in suitable physical and mental condition

(3) An inmate shall not be eligible if the releasing authority has determined that he/she presents a significant safety, security, or compliance risk to the community.

(4) Changes to this rule are effective June 12, 2017, and will not apply to inmates whose short-term transitional leave eligibility date is prior to December 31, 2017.

Stat Auth: ORS 179.040, 421.168, 423.020, 423.030, 423.075

Stats. Implemented: ORS 179.040, 421.168, 423.020, 423.030, 423.075

Hist.: DOC 8-2003(Temp), f. & cert. ef. 4-17-03 thru 10-13-03; DOC 15-2003, f. 10-3-03, cert. ef. 10-4-03; DOC 17-2005, f. 12-30-05, cert. ef. 1-1-06; DOC 17-2010(Temp), f. 11-23-10, cert. ef. 12-1-10 thru 5-30-11; DOC 10-2011, f. & cert. ef. 6-2-11; Renumbered from 291-063-0016, DOC 9-2017, f. 6-8-17, cert. ef. 6-12-17

291-063-0130

Duration of Short-Term Transitional Leave

(1) Inmates sentenced on or after August 1, 2013, are eligible for a period of short-term transitional leave of up to 90 days.

(2) Inmates sentenced prior to August 1, 2013, are eligible for a period of short-term transitional leave of up to 30 days.

Stat Auth: ORS 179.040, 421.168, 423.020, 423.030, 423.075

Stats. Implemented: ORS 179.040, 421.168, 423.020, 423.030, 423.075

Hist.: DOC 9-2017, f. 6-8-17, cert. ef. 6-12-17

291-063-0140

Approval of Short-Term Transitional Leave

(1) Short-term transitional leave may be granted for inmates releasing from any Department of Corrections facility or county facility with proper approval of the releasing authority.

(2) Transitional Leave Release Plan:

(a) Designated staff members shall initiate the short-term transitional leave process by identifying eligible inmates.

(b) Designated staff members, in conjunction with the supervising authority for the staff, shall assist eligible inmates in preparing a transitional leave release plan.

(3) Approval:

(a) The releasing authority or designee may grant a short-term transitional leave to allow an inmate to participate in an approved release plan.

(b) Under the provisions of ORS 144.260, notification must be sent to the district attorney 30 days before the inmate's unescorted release from actual physical custody. If the sentencing judge or victim's request, they will be notified in the same manner.

(c) No short-term transitional leave will be granted to allow the inmate to reside with a Department of Corrections employee, contractor, or volunteer unless the inmate is an immediate family member of the employee.

(d) If the transition plan is not approved, the inmate may obtain an administrative review of that decision by submitting a request in writing to the Assistant Director of Community Corrections Division. All administrative review decisions are final.

(4) All expenses while on short-term transitional leave shall be borne by the inmate unless otherwise specifically authorized. Inmates placed on short-term transitional leave are responsible for their own medical care.

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Stat Auth: ORS 179.040, 421.168, 423.020, 423.030, 423.075
Stats. Implemented: ORS 179.040, 421.168, 423.020, 423.030, 423.075
Hist.: CD 1-1990, f. & cert. ef. 1-29-90; CD 21-1990(Temp), f. & cert. ef. 11-1-90; CD 11-1991, f. & cert. ef. 4-24-91; DOC 8-2003(Temp), f. & cert. ef. 4-17-03 thru 10-13-03; DOC 15-2003, f. 10-3-03, cert. ef. 10-4-03; DOC 17-2005, f. 12-30-05, cert. ef. 1-1-06; DOC 17-2010(Temp), f. 11-23-10, cert. ef. 12-1-10 thru 5-30-11; DOC 10-2011, f. & cert. ef. 6-2-11; DOC 3-2017(Temp), f. & cert. ef. 3-15-17 thru 9-10-17; Renumbered from 291-063-0030, DOC 9-2017, f. 6-8-17, cert. ef. 6-12-17

291-063-0150

Conditions of Supervision for Short-Term Transitional Leave

If short-term transitional leave is approved, the releasing authority or designee will impose the conditions that are necessary to enhance community safety as referenced in ORS 144.102. Short-term transitional leave conditions will replicate as much as possible post-prison supervision conditions. Short-term transitional leave conditions may hold an inmate to a higher standard than post-prison supervision.

Stat Auth: ORS 179.040, 421.168, 423.020, 423.030, 423.075
Stats. Implemented: ORS 179.040, 421.168, 423.020, 423.030, 423.075
Hist.: DOC 9-2017, f. 6-8-17, cert. ef. 6-12-17

291-063-0160

Violations of Short Term Transitional Leave

(1) Sanctions may be imposed at the local level in accordance with OAR 291-058-0046 if:

(a) The supervising officer determines that the violation can appropriately be addressed; and

(b) The inmate admits the violation and accepts the sanction.

(2) Revocation of Transitional Leave

(a) An inmate found in violation while he or she is on transitional leave may be subject to a revocation of the leave and be returned to a Department of Corrections facility (OAR 291-105-0069(1)(e)) and may be subject to other sanctions in accordance with the Department of Corrections rules on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

(A) If the inmate's whereabouts are unknown, the supervising officer must immediately submit a warrant request in writing to the releasing authority. A warrant will be issued. Upon apprehension of the inmate, the supervising officer must report the alleged violation and recommended sanction in writing to the releasing authority.

(B) If the inmate's whereabouts are known and the violation is believed to support revocation of short-term transitional leave, the supervising officer must report the alleged violation in writing to the releasing authority within five working days of the alleged violation.

(b) When revocation of transitional leave is approved, the releasing authority shall ensure that a misconduct report is submitted in accordance with the department's rule on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105). When the inmate is returned to a Department of Corrections facility and a misconduct report is submitted, a hearing shall be conducted in accordance with the Department of Corrections rules on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

Stat Auth: ORS 179.040, 421.168, 423.020, 423.030, 423.075
Stats. Implemented: ORS 179.040, 421.168, 423.020, 423.030, 423.075
Hist.: DOC 8-2003(Temp), f. & cert. ef. 4-17-03 thru 10-13-03; DOC 15-2003, f. 10-3-03, cert. ef. 10-4-03; Renumbered from 291-063-0036, DOC 9-2017, f. 6-8-17, cert. ef. 6-12-17

291-063-1000

Emergency Leave and Supervised Trips - Authority, Purpose, and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 421.166, 423.020, 423.030, and 423.075

(2) Purpose: To provide uniform procedures, standards, and guidelines for granting or denying emergency leave or supervised trips and to establish supervision standards for such leaves.

(3) Policy: It is the policy of the Department of Corrections to allow inmates emergency leave or supervised trips from department facilities when circumstances indicate a leave or supervised trip would be in accordance with generally accepted correctional and rehabilitation practices.

Stat Auth: ORS 179.040, 421.166, 423.020, 423.030, 423.075
Stats. Implemented: ORS 179.040, 421.166, 423.020, 423.030, 423.075
Hist.: DOC 9-2017, f. 6-8-17, cert. ef. 6-12-17

291-063-1010

Definitions for OAR 291-063-1000 to 291-063-1040

(1) Department of Corrections Facility: Any institution, facility or staff office, including the grounds, operated by the Department of Corrections.

(2) Emergency Leave: A leave of ten days duration or less within the state for the specific purposes listed in OAR 291-063-1020(3) where the inmate is expected to return to the releasing facility.

(3) Enter Parole/Probation Record (EPR): A record on the Law Enforcement Data System (LEDS) which identifies an inmate who is in the community on parole, probation, post-prison supervision, short-term transitional leave, nonprison leave, or emergency leave exceeding five days.

(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 the delivery of services or coordination of program operations.

(5) Immediate Family Member: Spouse, domestic partner, parent, sibling, child, aunt, uncle, niece, nephew, grandchildren and grandparents, including foster, in-law, and step relationships. Immediate family also includes the caregiver of the inmate's minor child.

(6) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, post-prison supervision, or probation status.

(7) Supervised Trip: Any non-routine trip outside a Department of Corrections facility within the State of Oregon that is supervised by an employee of the Department of Corrections or a person authorized to supervise or maintain custody of persons outside of correctional facilities.

Stat Auth: ORS 179.040, 421.166, 423.020, 423.030, 423.075
Stats. Implemented: ORS 179.040, 421.166, 423.020, 423.030, 423.075
Hist.: DOC 9-2017, f. 6-8-17, cert. ef. 6-12-17

291-063-1020

Emergency Leave

(1) Emergency leave may be granted by any Department of Corrections facility with proper approval of the functional unit manager or designee. The same eligibility requirements that apply to short-term transitional leave in OAR 291-063-0120 also apply to emergency leave, except that persons incarcerated for parole or post-prison supervision revocation sanctions are not eligible for short-term transitional leave. However, such persons are eligible for emergency leave pursuant to ORS 421.166.

(2) Application:

(a) The inmate may apply for a leave by filling out an appropriate request and submitting it to the assigned counselor or designated staff member.

(b) Requests must be submitted in sufficient time for staff to review and verify the information provided.

(c) Counselors or designated staff members will verify the information given and submit the necessary documentation and any other relevant information for the releasing authority.

(3) Approval: The functional unit manager or designee may grant an emergency leave to an inmate for the following reasons:

(a) To visit a terminally ill family member if the member lives within the state.

(b) To visit a gravely ill child of the inmate if the child lives within the state.

(c) To attend the funeral or view the remains of an immediate family member if the funeral is in the state.

(4) The duration of the emergency leave shall be restricted to only the time necessary to accomplish the purpose of the leave.

(5) Emergency leave will not be granted in the company of a Department of Corrections employee or volunteer unless the inmate is an immediate family member of the employee or volunteer.

(6) In approving an emergency leave, the functional unit manager will impose conditions of release necessary for approval of the emergency leave.

(7) Inmates requesting non-emergency medical treatment while on emergency leave shall return to the releasing facility for examination and treatment if necessary.

(8) Expenses: Funds to cover expenses of any leave must be available in the inmate's account before leave may be granted, unless otherwise specifically authorized by the functional unit manager or designee. Any funds received designated for this purpose will not be used to reduce any indebtedness.

(9) Community Corrections Monitoring: When an emergency leave exceeds five days, the functional unit manager or his/her designee must arrange with Community Corrections staff for monitoring of the inmate while the inmate is in the community. Upon departure from the facility, an EPR shall be initiated by the releasing facility.

(a) Assigned Community Corrections staff may, when deemed necessary, request that the functional unit manager authority modify leave conditions with written prior notice to the inmate and documentation to the file.

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(b) Within ten days of the functional unit manager's approval to modify, the inmate may appeal to the Assistant Director of Operations the changes in leave conditions.

(10) Emergency Leave Violations: Violations of the conditions of an emergency leave constitute the basis for disciplinary action, which will be handled in accordance with the Department of Corrections rules on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105).

(a) Community Corrections staff have the authority to detain any inmate on emergency leave status and lodge him or her in a local jail pending investigation or return to a Department of Corrections intake facility.

(b) If the decision is made to remove an inmate from emergency leave status and return the inmate to the releasing facility, the responsibility for return will be as follows:

(A) Inmates who have been apprehended out-of-state will be returned to a Department of Corrections intake facility.

(B) Inmates who have been removed from emergency leave will be returned to the releasing facility.

(C) If the inmate fails to report as instructed, the supervising officer will immediately investigate the circumstances and report the incident to the functional unit manager or designee.

(D) If the inmate fails to report or return to the releasing facility as instructed, a warrant will be issued.

Stat Auth: ORS 179.040, 421.166, 423.020, 423.030, and 423.075
Stats. Implemented: ORS 179.040, 421.166, 423.020, 423.030, and 423.075
Hist.: CD 1-1990, f. & cert. ef. 1-29-90; CD 21-1990(Temp), f. & cert. ef. 11-1-90; CD 11-1991, f. & cert. ef. 4-24-91; DOC 8-2003(Temp), f. & cert. ef. 4-17-03 thru 10-13-03, Renumbered from 291-063-0025; DOC 15-2003, f. 10-3-03, cert. ef. 10-4-03; DOC 17-2005, f. 12-30-05, cert. ef. 1-1-06; Renumbered from 291-063-0050, DOC 9-2017, f. 6-8-17, cert. ef. 6-12-17

291-063-1030

Supervised Trips

(1) Supervised trips may be granted from any Department of Corrections facility with proper approval of the functional unit manager or designee.

(2) Application:

(a) An inmate may apply for a supervised trip by directing an appropriate supervised trip request to his/her assigned counselor or designated staff member. Except for the purpose of attending a private viewing before or after a funeral or bedside visits, these requests should be submitted no more than 15 and no less than seven working days in advance of the supervised trip date.

(b) The counselor or designated staff member will verify the information and submit the request and other relevant information to the functional unit manager.

(3) Approval: The functional unit manager or designee may grant supervised trips to inmates for the following reasons:

(a) To allow the inmate to visit a seriously ill relative with whom a meaningful relationship exists;

(b) To attend a private viewing before or after the funeral of an immediate family member;

(c) To allow the inmate to obtain medical or dental services not provided by the facility; or

(d) Other reasons consistent with accepted correctional and rehabilitation practices.

(4) The functional unit manager or designee may approve supervised trips for those inmates who do not meet the eligibility criteria for emergency leave as specified in these rules.

(a) No inmate of the Department of Corrections will be allowed a supervised trip unless the supervision is provided by a Department of Corrections employee or a person authorized to supervise or maintain custody of persons outside of correctional facilities.

(b) No supervised trips will be authorized for social reasons.

(c) Supervised trips may be authorized for civic purposes (for example, work projects or speaking engagements relative to crime prevention or substance abuse).

(d) Approval for all proposed supervised trips for club projects must be requested of the functional unit manager or designee in writing and staff must verify the request.

(5) Inmates approved for supervised trips will fall into two categories:

(a) When inmates judged by staff to be a threat to the community or themselves are granted supervised trips, appropriate protective restraints and escorts will be used.

(b) Inmates who are not considered a threat to the community or themselves must meet the following criteria:

(A) Inmate is in suitable physical and mental condition consistent with the reason for the trip;

(B) Programming and interests are consistent with trip purposes; and

(C) Depending upon the reason for the trip, the inmate has demonstrated a level of performance during incarceration indicating a reasonable expectation that the supervised trip will be successful.

(6) Expenses: Unless specific arrangements are approved in advance by the functional unit manager or designee, the inmate will pay for any expenses incurred for supervised trips.

(7) Violation:

(a) Failure to return from supervised trip shall be an escape. A warrant will be issued.

(b) All rules of prohibited conduct cited in the Department of Corrections rules on Prohibited Inmate Conduct and Processing Disciplinary Actions (OAR 291-105) apply to inmates on supervised trips.

Stat Auth: ORS 179.040, 421.166, 423.020, 423.030, 423.075
Stats. Implemented: ORS 179.040, 421.166, 423.020, 423.030, 423.075
Hist.: CD 1-1990, f. & cert. ef. 1-29-90; CD 21-1990(Temp), f. & cert. ef. 11-1-90; CD 11-1991, f. & cert. ef. 4-24-91; DOC 8-2003(Temp), f. & cert. ef. 4-17-03 thru 10-13-03; DOC 15-2003, f. 10-3-03, cert. ef. 10-4-03; Renumbered from 291-063-0040, DOC 9-2017, f. 6-8-17, cert. ef. 6-12-17

291-063-1040

Warrants

Issuing Warrants:

(1) Supervising officers will notify the functional unit manager or designee regarding an inmate's unauthorized departure whenever an inmate makes him/herself unavailable for supervision.

(2) The functional unit manager or designee will ensure a warrant is issued if the circumstances and facts so justify.

Stat Auth: ORS 179.040, 421.166, 423.020, 423.030, 423.075
Stats. Implemented: ORS 179.040, 421.166, 423.020, 423.030, 423.075
Hist.: DOC 8-2003(Temp), f. & cert. ef. 4-17-03 thru 10-13-03; DOC 15-2003, f. 10-3-03, cert. ef. 10-4-03; Renumbered from 291-063-0060, DOC 9-2017, f. 6-8-17, cert. ef. 6-12-17

Rule Caption: Transgender and Intersex (Inmate)

Adm. Order No.: DOC 10-2017

Filed with Sec. of State: 6-8-2017

Certified to be Effective: 6-8-17

Notice Publication Date: 3-1-2017

Rules Adopted: 291-210-0040, 291-210-0050

Rules Amended: 291-210-0010, 291-210-0020, 291-210-0030

Rules Repealed: 291-210-0010(T), 291-210-0020(T), 291-210-0030(T), 291-210-0040(T), 291-210-0050(T)

Subject: Currently, the department's rules establish department policies and procedures for the identification, assessment, review and management of inmates in DOC facilities who self-identify or present as transgender or intersex upon delivery to DOC at intake. However, the rules do not clearly set out department policies and procedures in certain areas of prison administration for these inmates during intake processing, or after facility assignment.

These rule amendments are necessary in order to more clearly and completely set out the department's policies and procedures in this area of prison administration, and to provide clearer information and direction for Department of Corrections inmates and staff regarding the same. These rule amendments set out and clarify DOC policy and procedures for the identification, assessment, review and management of inmates in DOC facilities who self-identify or present as transgender or intersex upon delivery to DOC at intake and after facility assignment, specifically including those regarding searches; facility and housing assignments; access to department-issued clothing, shower and hygiene; and appropriate and professional questioning by staff. These amendments also reflect certain definitional changes.

Rules Coordinator: Janet R. Worley — (503) 945-0933

291-210-0010

Authority, Purpose, and Policy

(1) Authority: The authority for these rules is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of these rules is to establish Department of Corrections policy and procedures for the identification, assessment,

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review, and management of inmates who present or identify as transgender or intersex.

(3) Policy: Within the inherent limitations of resources, and the need to maintain facility security, order and discipline, the health and safety of inmates and staff, and to further inmate rehabilitation, it is the policy of the Department of Corrections, based on available information, to:

(a) Seek to identify inmates that present as transgender or intersex upon delivery to the Department of Corrections during intake processing; and

(b) Assess, review, and manage inmates who identify as transgender or intersex on a case-by-case basis, in a respectful manner, considering each inmate's individual circumstances, including but not limited to the inmate's physical sexual characteristics, gender identification, physical presentation, behavior, and programming needs.

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

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

Hist.: DOC 15-2014(Temp), f. & cert. ef. 6-25-14 thru 12-22-14; DOC 20-2014, f. & cert. ef. 10-13-14; DOC 1-2017(Temp), f. & cert. ef. 2-15-17 thru 8-13-17; DOC 10-2017, f. & cert. ef. 6-8-17

291-210-0020

Definitions

(1) Behavioral Health Services (BHS): A Department of Corrections Health Services unit with primary responsibility for the assessment and treatment of inmates with mental illness and developmental disabilities.

(2) Gender: The socially constructed roles, behaviors, activities, and attributes that a given society typically or historically assigns to men and women.

(3) Gender Identity: Distinct from sexual orientation and refers to a person's internal, deeply felt sense of being male, female or something else.

(4) Intersex: A condition in which a person is born with external genitalia, internal reproductive organs, chromosome patterns, or an endocrine system that does not fit typical definitions of male or female.

(5) PREA Compliance Manager: A management staff person designated by the institution functional unit manager with sufficient time and authority to coordinate the facility's efforts to comply with the federal PREA standards.

(6) Transgender and Intersex Committee: A multi-disciplinary working group of DOC officials that reviews and determines appropriate housing assignments, recommends safety plans and provides support for inmates who identify as transgender or intersex. The committee will include at least one individual with knowledge of gender issues facing transgender and intersex inmates.

(7) Transgender: A person who identifies with or expresses a gender identity that differs from their assigned sex at birth.

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

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

Hist.: DOC 15-2014(Temp), f. & cert. ef. 6-25-14 thru 12-22-14; DOC 20-2014, f. & cert. ef. 10-13-14; DOC 1-2017(Temp), f. & cert. ef. 2-15-17 thru 8-13-17; DOC 10-2017, f. & cert. ef. 6-8-17

291-210-0030

Identification, Assessment, Review, and Management of Inmates who Identify as Transgender or Intersex at Intake

(1) Identification at Intake: Staff shall seek to identify inmates who present or identify as transgender or intersex upon delivery to the Department of Corrections during intake processing, based on available information from the county, the inmate (including the inmate's stated gender identity, if any), and as developed by staff.

(2) Appropriate and Professional Questioning:

(a) Staff shall interview inmates regarding their sex and gender identity only when necessary to develop information for making appropriate intake and housing assignments, classification assignments, programming assignments; to provide health care and health assessments; and as necessary for the inmate's health or safety, or for the safe, secure, and orderly operation of the facility.

(b) Staff shall interview inmates in a private and professional manner to avoid subjecting the inmate to the risk of possible abuse or ridicule.

(c) Designated staff shall submit information to the Transgender and Intersex Committee for review and determination of appropriate housing placement.

(3) Initial Placement in Holding Cell: When staff identify an inmate who presents or identifies as transgender or intersex during intake processing, staff shall place the inmate in a holding cell with no other inmates present to provide for the inmate's safety and to provide the inmate with a measure of privacy pending further review.

(4) Unclothed Searches:

(a) Unclothed searches are performed by appropriate security staff on each inmate upon the inmate's delivery to the facility. Ordinarily, a security staff member of the same gender as the inmate will be assigned to conduct the unclothed search.

(b) When an inmate identifies or presents as transgender or intersex during intake, staff shall ask the inmate to identify whether they prefer that male or female staff conduct the unclothed search.

(c) If an inmate who has not previously been identified as transgender or intersex during intake processing later identifies or presents as transgender or intersex during the conduct of an unclothed search, staff will immediately cease conducting the search and ask the inmate the gender of security staff they prefer to conduct the unclothed search. Staff will accommodate the inmate's stated preference.

(5) Intake Housing Assignment:

(a) Following initial placement in a holding cell, an inmate who identifies as transgender or intersex during intake processing shall be assigned to a single cell in the Infirmary, on a space available basis, until the appropriate housing for the inmate has been staffed by the Transgender and Intersex Committee.

(b) If there are no infirmary beds available, the functional unit manager or designee will assign the inmate to appropriate alternative housing in the facility, and document the reasons for the alternative housing assignment.

(6) Clothing at Intake Center: Inmates who identify as transgender or intersex at intake will be issued the following clothing to wear during intake processing — two sets of scrubs; two t-shirts; sweatshirt; two bras (if requested or needed); underwear (type issued based on inmate request); pajamas (type issued based on inmate request); and socks and intake shoes.

(7) Recreation at Intake Center: Inmates who identify as transgender or intersex at intake will be afforded the opportunity for out of cell time on the same basis as other inmates assigned to the unit they are being housed in or as facility operation allows. A minimum out of cell time for all inmates will be three times a week or as staff availability and circumstances allow.

(8) Shower and Hygiene at Intake Center: Inmates who identify as transgender or intersex at intake shall be given the opportunity to shower privately from other inmates.

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

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

Hist.: DOC 15-2014(Temp), f. & cert. ef. 6-25-14 thru 12-22-14; DOC 20-2014, f. & cert. ef. 10-13-14; DOC 1-2017(Temp), f. & cert. ef. 2-15-17 thru 8-13-17; DOC 10-2017, f. & cert. ef. 6-8-17

291-210-0040

Facility and Housing Assignments

(1) The Transgender and Intersex Committee will collect and review relevant information regarding inmates who identify as transgender or intersex and make appropriate facility and housing assignment decisions on a case-by-case basis.

(2) The Transgender and Intersex Committee will notify staff at the receiving facility of facility and housing assignment decisions regarding the inmate prior to the inmate's transfer.

(3) When an inmate is assigned to a facility by the Transgender and Intersex Committee, designated facility staff will determine and assign the inmate to appropriate housing within the facility unless the inmate's housing assignment has been specifically directed by the Transgender and Intersex Committee.

(4) An inmate who identifies as transgender or intersex may not be transferred to another facility without Transgender and Intersex Committee approval.

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

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

Hist.: DOC 1-2017(Temp), f. & cert. ef. 2-15-17 thru 8-13-17; DOC 10-2017, f. & cert. ef. 6-8-17

291-210-0050

Identification, Assessment, Review, and Management of Inmates who Identify as Transgender or Intersex after Facility Assignment

(1) Identification After Facility Assignment: If an inmate identifies as transgender or intersex after being assigned to a facility, staff shall notify Behavioral Health Services and the PREA Compliance Manager at the receiving facility. The PREA Compliance Manager will notify the Transgender and Intersex Committee and gather information for the Transgender and Intersex Committee's review.

(2) Appropriate and Professional Questioning:

(a) Behavioral Health Services and the PREA Compliance Manager shall interview the inmate regarding the inmate's assigned sex at birth, gender identity, gender expression, and security concerns.

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(b) Behavioral Health Services will submit information to the Transgender and Intersex Committee for its review, upon approval from the inmate. The PREA Compliance Manager will submit information to the Transgender and Intersex Committee for its review.

(c) Staff shall interview the inmate in a private setting and in a professional manner to avoid subjecting the inmate to the risk of possible abuse or ridicule.

(3) **Unclothed Searches:**

(a) After assignment and delivery to a permanent facility, unclothed searches of the inmate will ordinarily be conducted by male staff in facilities that are generally designated to house male inmates, and by female staff in facilities that are generally designated to house female inmates.

(b) However, the inmate may request approval from the Transgender and Intersex Committee, via an inmate communication (CD214), to have unclothed searches conducted by security staff of the other gender, subject to staff availability and circumstances.

(c) If the inmate's request is approved by the Transgender and Intersex Committee, security staff shall accommodate the inmate's stated preference when staff availability and circumstances allow.

(4) **Department-Issued Clothing:**

(a) Female undergarments may be issued to and worn by the inmate when assigned to a designated male facility if assigned to the inmate by the PREA Compliance Manager.

(b) Male undergarments may be issued to and worn by the inmate when assigned to a designated female facility if assigned to the inmate by the PREA Compliance Manager.

(5) **Shower and Hygiene:** If requested, transgender and intersex inmates shall be given the opportunity to shower separately from other inmates.

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

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

Hist: DOC 1-2017(Temp), f. & cert. ef. 2-15-17 thru 8-13-17; DOC 10-2017, f. & cert. ef. 6-8-17

Department of Energy
Chapter 330

Rule Caption: Amending and repealing public records request rules.

Adm. Order No.: DOE 4-2017

Filed with Sec. of State: 5-24-2017

Certified to be Effective: 5-24-17

Notice Publication Date: 5-1-2017

Rules Amended: 330-001-0025

Rules Repealed: 330-001-0015

Subject: These permanent rules amend and repeal the Oregon Department of Energy's public records request rules to align with Oregon Executive Order No. 16-06 and DAS Statewide Policy No. 107-001-030. To align with the DAS policy, the rule amendments remove duplicative language covered by the DAS policy relating to fees. The amendments update requirements and add the requirement for a requester to provide an email address. The rulemaking repealed the department's rule on charges for computer information requests, which is covered under the general public records request rule and did not need a separate rule.

Rules Coordinator: Elizabeth Ross—(503) 378-8534

330-001-0025

Public Records Request

(1) All public records of the Oregon Department of Energy are available for public inspection and copying at the department during usual business hours, except for records that the department has determined to be exempt or conditionally exempt from disclosure in accordance with ORS Chapter 192 and any other references establishing an exemption to disclosure of public records.

(2) A request to inspect or obtain copies of a public record or information from public records shall be made in writing and must include the following information:

(a) Name, address, email address and telephone number of the requester, except as considered unnecessary by the Director; and

(b) A specific description of the records requested.

(3) The department will charge fees involved in making public records available to the public as established by agency policy pursuant to ORS 192.440, and insure that all charges reflect no more than the actual

cost to the department of producing and processing the public records request.

(4) The requester must pay all fees for access of a public record in advance unless later payment is approved by the Director.

Stat. Auth.: ORS 192.430

Stats. Implemented: ORS 192.410 – 192.505

Hist.: DOE 2-2010, f. & cert. ef. 1-27-10; DOE 4-2017, f. & cert. ef. 5-24-17

Department of Fish and Wildlife
Chapter 635

Rule Caption: Amend rules to reduce hunting opportunity for specified 2017 mule deer and pronghorn hunts.

Adm. Order No.: DFW 60-2017(Temp)

Filed with Sec. of State: 5-16-2017

Certified to be Effective: 5-16-17 thru 11-10-17

Notice Publication Date:

Rules Amended: 635-067-0000, 635-069-0000, 635-073-0000, 635-075-0022

Subject: These amended rules authorize the Department to issue the following maximum number of tags for the purpose of hunting deer or pronghorn in each of the following controlled hunts. (See table under "Need for the Temporary Rule".)

Rules Coordinator: Michelle Tate—(503) 947-6044

635-067-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods, and other restrictions for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 067 incorporates, by reference, the requirements for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat set out in the document entitled "2017 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2017 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district and headquarters offices and website of the Oregon Department of Fish and Wildlife.

(3) Additional regulation information is available on the Oregon Department of Fish and Wildlife website at www.odfw.com.

(4) Controlled hunt tags shall be issued by a controlled hunt drawing following the procedures established in OAR chapter 635, division 060. Permitted weapons and ammunition are established in OAR chapter 635, division 065. Controlled hunt tag numbers for 2016 and 2017 are listed in Tables 1, 2, and 3 and are adopted and incorporated into OAR chapter 635, division 067 by reference.

(5) Notwithstanding the provisions of the 2017 Oregon Big Game Hunting Regulations, pronghorn antelope controlled hunt tag numbers for the controlled hunt areas listed on pages 36 and 37 are changed as follows in Table 1:

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

[Publications: Publications referenced are available from the agency.]

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

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

Hist.: FWC 65-1989, f. & cert. ef. 8-15-89; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 128-2005, f. 12-1-05, cert. ef. 1-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 127-2006, f. 12-7-06, cert. ef. 1-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 118-2007, f. 10-31-07, cert. ef. 1-1-08; DFW 60-2008, f. & cert. ef. 6-12-08; DFW 150-2008, f. 12-18-08, cert. ef. 1-1-09; DFW 66-2009, f. & cert. ef. 6-10-09; DFW 140-2009, f. 11-3-09, cert. ef. 1-1-10; DFW 83-2010, f. & cert. ef. 6-15-10; DFW 85-2010(Temp), f. & cert. ef. 6-21-10 thru 12-17-10; DFW 168-2010, f. 12-29-10, cert. ef. 1-1-11; DFW 62-2011, f. & cert. ef. 6-3-11; DFW 159-2011, f. 12-14-11, cert. ef. 1-1-12; DFW 58-2012, f. & cert. ef. 6-11-12; DFW 147-2012, f. 12-18-12, cert. ef. 1-1-13; DFW 53-2013, f. & cert. ef. 6-10-13; DFW 138-2013, f. & cert. ef. 12-20-13; DFW 63-2014, f. & cert. ef. 6-10-14; DFW 1-2015, f. & cert. ef. 1-6-15; DFW 69-2015, f. & cert. ef. 6-11-15; DFW 18-2016, f. & cert. ef. 3-21-16; DFW 81-2016, f. & cert. ef. 6-27-16; DFW 20-2017, f. & cert. ef. 3-2-17; DFW 60-2017(Temp), f. & cert. ef. 5-16-17 thru 11-10-17

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635-069-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting eastern Oregon deer pursuant to ORS Chapter 496

(2) Controlled hunt tag numbers for 2016 and 2017 are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 069 by reference

(3) OAR chapter 635, division 069 incorporates, by reference, the requirements for hunting eastern Oregon deer set out in the document entitled "2017 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2017 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting eastern Oregon deer. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices and website of the Oregon Department of Fish and Wildlife.

(4) Additional regulation information is available on the Oregon Department of Fish and Wildlife website at www.odfw.com.

(5) Notwithstanding the provisions of the 2017 Oregon Big Game Hunting Regulations, mule deer controlled hunt tag numbers for controlled hunt areas listed on pages 46, 58, and 59, are changed as follows in Tables 1 and 2:

[Publications and Tables: Publications and Tables referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 40-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 32-1999(Temp), f. & cert. ef. 5-4-99 thru 10-31-99; DFW 34-1999(Temp), f. & cert. ef. 5-12-99 thru 10-31-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. & cert. ef. 1-12-00; DFW 20-2000(Temp), f. & cert. ef. 4-12-00 thru 6-30-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. & cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. & cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 7-2003, f. & cert. ef. 1-17-03, cert. ef. 2-1-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 122-2003, f. & cert. ef. 2-2-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 123-2004, f. & cert. ef. 1-13-12, cert. ef. 2-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 130-2005, f. & cert. ef. 2-1-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 124-2006, f. & cert. ef. 12-7-06, cert. ef. 2-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 117-2007, f. & cert. ef. 10-31-07, cert. ef. 2-1-08; DFW 60-2008, f. & cert. ef. 6-12-08; DFW 8-2009, f. & cert. ef. 2-3-09; DFW 66-2009, f. & cert. ef. 6-10-09; DFW 4-2010, f. & cert. ef. 1-12-10, cert. ef. 2-1-10; DFW 83-2010, f. & cert. ef. 6-15-10; DFW 7-2011, f. & cert. ef. 1-31-11, cert. ef. 2-1-11; DFW 62-2011, f. & cert. ef. 6-3-11; DFW 3-2012, f. & cert. ef. 1-13-12, cert. ef. 2-1-12; DFW 58-2012, f. & cert. ef. 6-11-12; DFW 4-2013, f. & cert. ef. 1-15-13, cert. ef. 2-1-13; DFW 53-2013, f. & cert. ef. 6-10-13; DFW 3-2014, f. & cert. ef. 1-22-14; DFW 63-2014, f. & cert. ef. 6-10-14; DFW 15-2015, f. & cert. ef. 2-26-15; DFW 69-2015, f. & cert. ef. 6-11-15; DFW 18-2016, f. & cert. ef. 3-21-16; DFW 81-2016, f. & cert. ef. 6-27-16; DFW 20-2017, f. & cert. ef. 3-2-17; DFW 60-2017(Temp), f. & cert. ef. 5-16-17 thru 11-10-17

635-073-0000

Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas and other restrictions for bow and muzzleloader hunting, Premium Hunts, and controlled deer and elk youth hunts; pursuant to ORS Chapter 496

(2) Controlled hunt tag numbers for 2016 and 2017 for deer and elk bow and muzzleloader hunting and deer and elk youth hunts are listed in Tables 1, 2 and 3 and are adopted and incorporated into OAR chapter 635, division 073 by reference

(3) OAR chapter 073 incorporates, by reference, the requirements for bow and muzzleloader hunting, Premium Hunts, and controlled deer and elk youth hunts set out in the document entitled "2017 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2017 Oregon Big Game Regulations," in addition to OAR chapter 635, to determine all applicable requirements for bow and muzzleloader hunting, Premium Hunts, and controlled deer and elk youth hunts. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices and website of the Oregon Department of Fish and Wildlife

(4) Additional regulation information is available on the Oregon Department of Fish and Wildlife website at www.odfw.com.

(5) Notwithstanding the provisions of the 2017 Oregon Big Game Hunting Regulation, Mule deer controlled hunt tag numbers for the controlled Youth hunt areas listed on page 64 are changed as follows in Table 1:

[Publications and Tables: Publications and Tables referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Hist.: FWC 44-1988, f. & cert. ef. 6-13-88; FWC 18-1994, f. & cert. ef. 3-30-94, cert. ef. 5-1-94; FWC 17-1996, f. & cert. ef. 4-10-96, cert. ef. 4-15-96; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. & cert. ef. 1-12-00; DFW 21-2000(Temp), f. & cert. ef. 4-12-00 thru 6-30-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f.

12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. & cert. ef. 1-17-03, cert. ef. 1-20-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 122-2003, f. & cert. ef. 12-4-03, cert. ef. 2-2-04; DFW 130-2003(Temp), f. & cert. ef. 12-24-03 thru 3-1-04; DFW 53-2004, f. & cert. ef. 6-16-04; DFW 123-2004, f. & cert. ef. 1-13-12, cert. ef. 2-1-05; DFW 53-2005, f. & cert. ef. 6-14-05; DFW 130-2005, f. & cert. ef. 2-1-06; DFW 22-2006(Temp), f. & cert. ef. 4-7-06 thru 10-4-06; DFW 41-2006, f. & cert. ef. 6-14-06; DFW 124-2006, f. & cert. ef. 12-7-06, cert. ef. 2-1-07; DFW 42-2007, f. & cert. ef. 6-14-07; DFW 117-2007, f. & cert. ef. 10-31-07, cert. ef. 2-1-08; DFW 60-2008, f. & cert. ef. 6-12-08; DFW 8-2009, f. & cert. ef. 2-3-09; DFW 66-2009, f. & cert. ef. 6-10-09; DFW 4-2010, f. & cert. ef. 1-12-10, cert. ef. 2-1-10; DFW 83-2010, f. & cert. ef. 6-15-10; DFW 7-2011, f. & cert. ef. 1-31-11, cert. ef. 2-1-11; DFW 62-2011, f. & cert. ef. 6-3-11; DFW 3-2012, f. & cert. ef. 1-13-12, cert. ef. 2-1-12; DFW 58-2012, f. & cert. ef. 6-11-12; DFW 4-2013, f. & cert. ef. 1-15-13, cert. ef. 2-1-13; DFW 53-2013, f. & cert. ef. 6-10-13; DFW 3-2014, f. & cert. ef. 1-22-14; DFW 63-2014, f. & cert. ef. 6-10-14; DFW 89-2014(Temp), f. & cert. ef. 7-7-14 thru 11-1-14; Administrative correction 11-24-14; DFW 15-2015, f. & cert. ef. 2-26-15; DFW 69-2015, f. & cert. ef. 6-11-15; DFW 18-2016, f. & cert. ef. 3-21-16; DFW 46-2016(Temp), f. & cert. ef. 5-10-16 thru 11-1-16; DFW 81-2016, f. & cert. ef. 6-27-16; DFW 60-2017(Temp), f. & cert. ef. 5-16-17 thru 11-10-17

635-075-0022

Landowner Hunting Preference Tags for Mule Deer

(1) This rule further implements HB 2027A whereby the 2013 Legislative Assembly directed the Department through the commission to specify a formula that bases the number of landowner preference tags available for mule deer on the management, research, and habitat needs set forth in the wildlife management plan for mule deer.

(2) For purposes of this rule, the population management objectives (MOs) for each wildlife management unit that were adopted by the commission in August 2016 are considered representative of the management, research, and habitat needs for mule deer.

(3) The formula to determine the number of landowner hunting preference tags available for buck deer in a unit is as follows:

(a) In those wildlife management units where the estimated mule deer population is less than 60% of the established population management objective, the number of landowner hunting preference tags available for buck deer in that unit may be limited to five tags or 10 percent of the total controlled buck tags authorized for the public for each hunt in that unit by the commission, whichever is greater.

(b) In those wildlife management units where the estimated mule deer population is equal to or more than 60% of the established population management objective, but less than 80% of the established population management objective, the number of landowner hunting preference tags available for buck deer in that unit may be limited to five tags or 15 percent of the total controlled buck tags authorized for the public for each hunt in that unit by the commission, whichever is greater.

(c) In the Biggs, Columbia Basin, and Mount Emily wildlife management units, and in the NE Owyhee 167A hunt area, and in those wildlife management units where the estimated mule deer population is equal to or more than 80% of the established population management objective, the number of landowner hunting preference tags available for buck deer in that unit may be issued based upon a landowner's acreage as set forth in 635-075-0005(8).

(d) If conditions such as but not limited to disease or harsh winter weather occur, resulting in adoption of a Temporary OAR to reduce 100 Series mule deer tags by equal to or more than 25% from the number authorized by the Commission in areas listed or described in 635-075-0022(3)(c), Limited Landowner Preference mule deer tags in those areas may be limited as described in 635-075-0022(3)(b).

(4) If landowner preference tags remain from the controlled hunts described in 635-075-0022(3)(a) or (b) after the game mammal controlled hunt drawing, the Department will issue remaining tags to qualified landowners as described in 635-075-0024

(5) Landowner Hunting Preference Tag numbers for mule deer in 2016 and 2017 are listed in Table 1 and are adopted and incorporated in OAR chapter 635, division 075 by reference.

(a) Implementing 635-075-0022(3)(a)(b)(c)(d) to adjust controlled hunt tag numbers in response to harsh weather during the 2016-2017 winter, Landowner Hunting Preference Tag numbers for mule deer in 2017 are changed as follows in Table 1:

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.151 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.151 & 496.162
Hist.: DFW 1-2015, f. & cert. ef. 1-6-15; DFW 69-2015, f. & cert. ef. 6-11-15; DFW 81-2016, f. & cert. ef. 6-27-16; DFW 131-2016(Temp), f. & cert. ef. 9-29-16, cert. ef. 9-30-16 thru 3-15-17; DFW 27-2017, f. & cert. ef. 3-21-17; DFW 48-2017, f. & cert. ef. 4-24-17; DFW 60-2017(Temp), f. & cert. ef. 5-16-17 thru 11-10-17

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Rule Caption: Modify 2017 Spring Commercial Seasons in the Select Areas of the Columbia River.

ADMINISTRATIVE RULES

635-042-0170

Tongue Point Basin and South Channel

(1) The winter and spring season Tongue Point fishing area includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility through navigation marker #6 to Mott Island, a line from a marker at the southeast end of Mott Island northeasterly to a marker on the northwest tip of Lois Island, and a line from a marker on the southwest end of Lois Island westerly to a marker on the Oregon shore.

(2) South Channel area includes all waters bounded by a line from a marker on John Day Point to a marker on the southwest end of Lois Island upstream to an upper boundary line from a marker on Settler Point northwesterly to the flashing red USCG marker "10", northwesterly to a marker on the eastern tip of Burnside Island defining the upstream terminus of South Channel.

(3) Salmon, and shad may be taken for commercial purposes in those waters of Tongue Point and South Channel as described in section (1) and section (2) of this rule. Open fishing periods are:

(a) Winter season:

(b) Spring season:

(i) Thursday night May 18 and Monday and Thursday nights from May 29 through June 13 2017, from 7:00 p.m. to 7:00 a.m. (12 hours) the following morning.

(4) Gear restrictions are as follows:

(a) In waters described in section (1) as Tongue Point basin, gill nets may not exceed 250 fathoms in length and weight limit on the lead line is not to exceed two pounds on any one fathom. It is unlawful to use a gill net having a mesh size that is less than 7 inches during winter season and 9.75-inches during spring season.

(b) In waters described in section (2) as South Channel, nets are restricted to 250 fathoms in length with no weight restrictions on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. It is *unlawful* to use a gill net having a mesh size that is less than 7 inches during winter season and 9.75-inches during spring season.

(c) Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(5) Retention and sale of sturgeon is prohibited.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; FWC 61-1997(Temp), f. 9-23-97, cert. ef. 9-24-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 41-1998(Temp), f. 5-28-98, cert. ef. 5-29-98; DFW 42-1998(Temp), f. 5-29-98, cert. ef. 5-31-98 thru 6-6-98; DFW 45-1998(Temp), f. 6-5-98, cert. ef. 6-6-98 thru 6-10-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998, f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; Administrative correction 7-30-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 76-2006(Temp), f. 8-8-06, cert. ef. 9-5-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative Correction 1-24-08; DFW 44-2008(Temp), f. 4-25-08, cert. ef. 4-28-08 thru 10-24-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; DFW 85-2008(Temp), f. 7-24-08, cert. ef. 8-1-08 thru 12-31-08; DFW 108-2008(Temp), f. 9-8-08, cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; DFW 12-2009(Temp), f. 2-13-09, cert. ef. 2-15-09 thru 7-31-09; DFW 89-2009(Temp), f. 8-3-09, cert. ef. 8-4-09 thru 12-31-09; DFW 107-2009(Temp), f. 9-2-09, cert. ef. 9-5-09 thru 10-31-09; Administrative correction 11-19-09; DFW 29-2010(Temp), f. 3-9-10, cert. ef. 4-19-10 thru 6-12-10; DFW 46-2010(Temp), f. & cert. ef. 4-21-10 thru 7-31-10; DFW 53-2010(Temp), f. & cert. ef. 5-4-10 thru 7-31-10; DFW 57-2010(Temp), f. & cert. ef. 5-11-10 thru 7-31-10; DFW 69-2010(Temp), f. & cert. ef. 5-18-10 thru 7-31-10; DFW 113-2010(Temp), f. 8-2-10, cert. ef. 8-4-10 thru 10-31-10; DFW 129-2010(Temp), f. & cert. ef. 9-10-10 thru 10-31-10; Administrative correction 11-23-10; DFW 12-2011(Temp), f. 2-10-11, cert. ef. 2-13-11 thru 7-29-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 32-2011(Temp), f. 4-20-11, cert. ef. 4-21-11 thru 7-29-11; DFW 44-2011(Temp), f. & cert. ef. 5-11-11 thru 6-10-11; Administrative correction 6-28-11; DFW 113-2011(Temp), f. 8-10-11, cert. ef. 8-15-11 thru 10-31-11; DFW 122-2011(Temp), f. 8-29-11, cert. ef. 9-19-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 41-2012(Temp), f. 4-24-12, cert. ef. 4-26-12 thru 6-30-12; Administrative correction, 8-1-12; DFW 104-2012(Temp), f. 8-6-12, cert. ef. 8-13-12 thru 10-31-12;

Administrative correction 11-23-12; DFW 11-2013(Temp), f. 2-8-13, cert. ef. 2-11-13 thru 7-31-13; DFW 34-2013(Temp), f. 5-14-13, cert. ef. 5-15-13 thru 7-31-13; Administrative correction, 8-21-13; DFW 91-2013(Temp), f. 8-22-13, cert. ef. 8-26-13 thru 10-31-13; DFW 110-2013(Temp), f. 9-27-13, cert. ef. 9-30-13 thru 10-31-13; Administrative correction, 11-22-13; DFW 8-2014(Temp), f. & cert. ef. 2-10-14 thru 7-31-14; DFW 35-2014(Temp), f. & cert. ef. 4-24-14 thru 7-31-14; DFW 39-2014(Temp), f. 5-7-14, cert. ef. 5-8-14 thru 7-31-14; DFW 115-2014(Temp), f. 8-5-14, cert. ef. 8-18-14 thru 10-31-14; DFW 135-2014(Temp), f. & cert. ef. 9-19-14 thru 10-31-14; Administrative correction 11-24-14; DFW 10-2015(Temp), f. 2-3-15, cert. ef. 2-9-15 thru 7-30-15; DFW 29-2015(Temp), f. & cert. ef. 4-21-15 thru 7-30-15; DFW 37-2015(Temp), f. 5-1-15, cert. ef. 5-4-15 thru 7-30-15; DFW 102-2015(Temp), f. 8-10-15, cert. ef. 8-17-15 thru 10-31-15; Administrative correction, 11-20-15; DFW 8-2016(Temp), f. 2-1-16, cert. ef. 2-8-16 thru 7-31-16; DFW 32-2016(Temp), f. 4-20-16, cert. ef. 4-21-16 thru 7-31-16; DFW 71-2016(Temp), f. 6-13-16, cert. ef. 6-16-16 thru 7-31-16; DFW 78-2016(Temp), f. 6-23-16 thru 7-31-16; DFW 85-2016(Temp), f. & cert. ef. 6-30-16 thru 7-31-16; DFW 87-2016(Temp), f. & cert. ef. 7-7-16 thru 7-31-16; DFW 92-2016(Temp), f. 7-13-16, cert. ef. 7-14-16 thru 7-31-16; DFW 101-2016(Temp), f. 8-2-16, cert. ef. 8-24-16 thru 10-31-16; DFW 9-2017(Temp), f. & cert. ef. 2-6-17 thru 3-28-17; DFW 25-2017(Temp), f. & cert. ef. 3-20-17 thru 6-13-17; DFW 32-2017(Temp), f. 3-29-17, cert. ef. 3-30-17 thru 9-15-17; DFW 61-2017(Temp), f. 5-18-17, cert. ef. 5-22-17 thru 9-15-17

635-042-0180

Deep River Select Area Salmon Season

(1) Salmon and shad, may be taken for commercial purposes from the US Coast Guard navigation marker #16 southwest to a marker on the Washington shore, upstream to the Highway 4 Bridge.

(2) The fishing seasons are open:

(a) Winter season:

(b) Spring season: Effective May 22 through June 13, the Deep River Select Area fishing is closed.

(3) Gear restrictions are as follows:

(a) Gill nets may not exceed 100 fathoms in length and there is no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Nets may not be tied off to stationary structures and may not fully cross navigation channel.

(b) It is unlawful to operate in any river, stream or channel any gill net longer than three-fourths the width of the stream. It is unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area, except as otherwise provided for in the rules and regulations of the department WAC 220-20-010(17). Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(c) Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

(d) During the winter season, outlined above in subsection (2)(a), it is *unlawful* to use a gill net having a mesh size that is less than 7-inches;

(e) During the spring season, outlined above in subsection (2)(b) it is *unlawful* to use a gill net having a mesh size that is more than 9.75-inches.

(4) Retention and sale of sturgeon is prohibited.

(5) Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by WDFW staff. During the winter season, described in subsection (2)(a) above, fishers are required to call (360) 795-0319 to confirm the location and time of sampling. During the spring season, described in subsection (2)(b) above, a sampling station will be established at WDFW's Oneida Road boat ramp, about 0.5 miles upstream of the Deep River area downstream boundary (USCG navigation marker #16).

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 19-2003(Temp), f. 3-12-03, cert. ef. 4-17-03 thru 6-13-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru

ADMINISTRATIVE RULES

7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 77-2006(Temp), f. 8-8-06, cert. ef. 9-4-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 9-18-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 25-2007(Temp), f. 4-17-07, cert. ef. 4-18-07 thru 7-26-07; DFW 28-2007(Temp), f. & cert. ef. 4-26-07 thru 7-26-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative Correction 1-24-08; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 16-2008(Temp), f. 2-26-08, cert. ef. 3-2-08 thru 8-28-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; DFW 85-2008(Temp), f. 7-24-08, cert. ef. 8-1-08 thru 12-31-08; DFW 108-2008(Temp), f. 9-8-08, cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; DFW 12-2009(Temp), f. 2-13-09, cert. ef. 2-15-09 thru 7-31-09; DFW 23-2009(Temp), f. 3-5-09, cert. ef. 3-6-09 thru 4-30-09; DFW 35-2009(Temp), f. 4-7-09, cert. ef. 4-8-09 thru 4-30-09; DFW 49-2009(Temp), f. 5-14-09, cert. ef. 5-17-09 thru 7-31-09; DFW 89-2009(Temp), f. 8-3-09, cert. ef. 8-4-09 thru 12-31-09; DFW 107-2009(Temp), f. 9-2-09, cert. ef. 9-5-09 thru 10-31-09; DFW 112-2009(Temp), f. 9-11-09, cert. ef. 9-13-09 thru 10-30-09; DFW 121-2009(Temp), f. & cert. ef. 9-30-09 thru 10-31-09; Administrative correction 11-19-09; DFW 16-2010(Temp), f. 2-19-10, cert. ef. 2-22-10 thru 6-10-10; DFW 40-2010(Temp), f. & cert. ef. 4-1-10 thru 7-31-10; DFW 46-2010(Temp), f. & cert. ef. 4-21-10 thru 7-31-10; DFW 53-2010(Temp), f. & cert. ef. 5-4-10 thru 7-31-10; DFW 57-2010(Temp), f. & cert. ef. 5-11-10 thru 7-31-10; DFW 69-2010(Temp), f. & cert. ef. 5-18-10 thru 7-31-10; DFW 113-2010(Temp), f. 8-2-10, cert. ef. 8-4-10 thru 10-31-10; DFW 129-2010(Temp), f. & cert. ef. 9-10-10 thru 10-31-10; Administrative correction 11-23-10; DFW 12-2011(Temp), f. 2-10-11, cert. ef. 2-13-11 thru 7-29-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 32-2011(Temp), f. 4-20-11, cert. ef. 4-21-11 thru 7-29-11; DFW 53-2011(Temp), f. & cert. ef. 5-18-11 thru 6-10-11; Administrative correction 6-28-11; DFW 113-2011(Temp), f. 8-10-11, cert. ef. 8-15-11 thru 10-31-11; Administrative correction 11-18-11; DFW 12-2012(Temp), f. 2-8-12, cert. ef. 2-12-12 thru 7-31-12; DFW 104-2012(Temp), f. 8-6-12, cert. ef. 8-13-12 thru 10-31-12; Administrative correction 11-23-12; DFW 11-2013(Temp), f. 2-8-13, cert. ef. 2-11-13 thru 7-31-13; DFW 24-2013(Temp), f. & cert. ef. 3-21-13 thru 7-31-13; Administrative correction 8-21-13; DFW 91-2013(Temp), f. 8-22-13, cert. ef. 8-26-13 thru 10-31-13; DFW 110-2013(Temp), f. 9-27-13, cert. ef. 9-30-13 thru 10-31-13; Administrative correction 11-22-13; DFW 8-2014(Temp), f. & cert. ef. 2-10-14 thru 7-31-14; DFW 115-2014(Temp), f. 8-5-14, cert. ef. 8-18-14 thru 10-31-14; DFW 135-2014(Temp), f. & cert. ef. 9-19-14 thru 10-31-14; Administrative correction 11-24-14; DFW 10-2015(Temp), f. 2-3-15, cert. ef. 2-9-15 thru 7-30-15; DFW 29-2015(Temp), f. & cert. ef. 4-21-15 thru 7-30-15; DFW 37-2015(Temp), f. 5-1-15, cert. ef. 5-4-15 thru 7-30-15; DFW 102-2015(Temp), f. 8-10-15, cert. ef. 8-17-15 thru 10-31-15; Administrative correction 11-20-15; DFW 8-2016(Temp), f. 2-1-16, cert. ef. 2-8-16 thru 7-31-16; DFW 23-2016(Temp), f. & cert. ef. 3-28-16 thru 7-31-16; DFW 32-2016(Temp), f. 4-20-16, cert. ef. 4-21-16 thru 7-31-16; DFW 99-2016(Temp), f. 7-29-16, cert. ef. 8-1-16 thru 10-31-16; DFW 9-2017(Temp), f. & cert. ef. 2-6-17 thru 3-28-17; DFW 32-2017(Temp), f. 3-29-17, cert. ef. 3-30-17 thru 9-15-17; DFW 61-2017(Temp), f. 5-18-17, cert. ef. 5-22-17 thru 9-15-17

Rule Caption: Sport Pacific Halibut All-Depth Season from Leadbetter Point, WA to Cape Falcon, OR Closes

Adm. Order No.: DFW 62-2017(Temp)

Filed with Sec. of State: 5-24-2017

Certified to be Effective: 5-25-17 thru 9-30-17

Notice Publication Date:

Rules Amended: 635-039-0085

Subject: Amended rule closes the all-depth sport fishery for Pacific halibut in the area between Leadbetter Point, WA and Cape Falcon, OR at 11:59 p.m. on Thursday, May 25, 2017 due to the projected attainment of the pre-season quota of 12,299 pounds. This rule is consistent with regulations previously implemented by the federal government and the International Pacific Halibut Commission for the 2017 Oregon sport fishery for Pacific halibut.

Rules Coordinator: Michelle Tate—(503) 947-6044

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:

(a) Title 50 of the Code of Federal Regulations, Part 300, Subpart E (October 1, 2016 ed.), as amended;

(b) Federal Register Vol. 82, No. 43, dated March 7, 2017; and

(c) Federal Register Vol. 82, No. 75, dated April 20, 2017.

(2) Therefore, persons must consult all publications referenced in this rule in addition to division 039 to determine applicable halibut fishing seasons.

(3) Effective 11:59 p.m., Thursday, May 25, 2017 the Columbia River Subarea (Leadbetter Point, WA to Cape Falcon, OR) all-depth season is closed to the retention of Pacific halibut.

[Publications: Publications referenced are 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 cor-

rection 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; DFW 90-2007(Temp), f. 9-19-07, cert. ef. 9-20-07 thru 10-31-07; Administrative correction 11-17-07; DFW 57-2008(Temp), f. 5-30-08, cert. ef. 6-1-08 thru 7-31-08; DFW 81-2008(Temp), f. 7-11-08, cert. ef. 8-2-08 thru 9-30-08; DFW 92-2008(Temp), f. & cert. ef. 8-11-08 thru 9-30-08; DFW 101-2008(Temp), f. 8-25-08, cert. ef. 8-29-08 thru 9-30-08; DFW 107-2008(Temp), f. 9-5-08, cert. ef. 9-7-08 thru 12-31-08; DFW 111-2008(Temp), f. & cert. ef. 9-16-08 thru 12-31-08; DFW 120-2008(Temp), f. 9-25-08, cert. ef. 9-27-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 55-2009(Temp), f. & cert. ef. 5-22-09 thru 8-6-09; DFW 94-2009(Temp), f. 8-14-09, cert. ef. 8-16-09 thru 12-31-09; Administrative correction 1-25-10; DFW 32-2010, f. & cert. ef. 3-15-10; DFW 37-2010, f. 3-30-10, cert. ef. 4-1-10; DFW 100-2010(Temp), f. 7-15-10, cert. ef. 7-17-10 thru 10-31-10; DFW 118-2010(Temp), f. & cert. ef. 8-13-10 thru 10-31-10; Administrative correction 11-23-10; DFW 24-2011, f. & cert. ef. 3-22-11; DFW 58-2011(Temp), f. 5-27-11, cert. ef. 6-4-11 thru 8-4-11; DFW 82-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 8-4-11; DFW 85-2011(Temp), f. 7-5-11, cert. ef. 7-6-11 thru 10-31-11; DFW 114-2011(Temp), f. & cert. ef. 8-12-11 thru 10-31-11; DFW 135-2011(Temp), f. 9-21-11, cert. ef. 10-1-11 thru 12-31-11; DFW 39-2012, f. & cert. ef. 4-24-12; DFW 84-2012(Temp), f. & cert. ef. 7-5-12 thru 8-2-12; DFW 91-2012(Temp), f. 7-19-12, cert. ef. 7-22-12 thru 10-31-12; DFW 111-2012(Temp), f. 8-23-12, cert. ef. 8-24-12 thru 12-31-12; DFW 123-2012(Temp), f. 9-19-12, cert. ef. 9-24-12 thru 10-31-12; Administrative correction 11-23-12; DFW 65-2013(Temp), f. 6-27-13, cert. ef. 6-28-13 thru 8-2-13; DFW 78-2013(Temp), f. & cert. ef. 7-23-13 thru 10-31-13; DFW 86-2013(Temp), f. & cert. ef. 8-8-13 thru 10-31-13; Administrative correction 11-22-13; DFW 36-2014, f. 4-29-14, cert. ef. 5-1-14; DFW 80-2014(Temp), f. 6-26-14, cert. ef. 6-27-14 thru 12-24-14; DFW 123-2014(Temp), f. & cert. ef. 8-21-14 thru 12-31-14; Administrative correction 1-27-15; DFW 34-2015, f. & cert. ef. 4-28-15; DFW 56-2015(Temp), f. 6-2-15, cert. ef. 6-3-15 thru 9-30-15; DFW 65-2015(Temp), f. 6-10-15, cert. ef. 6-15-15 thru 9-30-15; Administrative correction 10-22-15; DFW 35-2016, f. & cert. ef. 4-26-16; DFW 63-2016(Temp), f. 6-1-16, cert. ef. 6-2-16 thru 9-30-16; DFW 66-2016(Temp), f. 6-6-16, cert. ef. 6-8-16 thru 9-30-16; DFW 46-2017, f. & cert. ef. 4-24-17; DFW 62-2017(Temp), f. 5-24-17, cert. ef. 5-25-17 thru 9-30-17

Rule Caption: Modify rules for harvest of Pacific lamprey at Willamette Falls for personal use.

Adm. Order No.: DFW 63-2017(Temp)

Filed with Sec. of State: 5-26-2017

Certified to be Effective: 6-1-17 thru 7-31-17

Notice Publication Date:

Rules Amended: 635-017-0090

Rules Suspended: 635-017-0090(T)

Subject: The existing permanent rule allows harvest of Pacific lamprey at Willamette Falls four days per week from June 1-July 31 annually. This rule modification allows two additional harvest days per week during the normal harvest season to provide more flexibility for participants. Oregon Department of Fish and Wildlife staff will use harvest data from the 2017 season to determine if the allowance of additional days significantly affects overall levels of harvest or not, in order to inform potential future permanent rule proposals.

Rules Coordinator: Michelle Tate—(503) 947-6044

635-017-0090

Inclusions and Modifications

(1) The 2017 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 2017 Oregon Sport Fishing Regulations.

(2) Pacific Lamprey Harvest:

(a) Pursuant to OAR 635-044-0130(1)(b), authorization from the Oregon Fish and Wildlife Commission must be in possession by individuals collecting or possessing Pacific lamprey for personal use. Permits are available from ODFW, 17330 SE Evelyn Street, Clackamas, OR 97015;

(b) Open personal use fishing period is June 1 through July 31 from 7:00 A.M. to 6:00 P.M. except harvest is prohibited on Wednesdays;

(c) Open fishing area is the Willamette River at Willamette Falls on the east side of the falls only, excluding Horseshoe Area at the peak of the falls;

(d) Gear is restricted to hand or hand-powered tools only;

(e) Catch must be recorded daily on a harvest record card prior to leaving the open fishing area. Harvest record cards will be provided by ODFW. All harvest record cards must be returned to the ODFW Clackamas office by August 31 to report catch. Permit holders who do not return the harvest record cards by August 31 will be ineligible to receive a permit in the following year.

(f) Harvesters must allow sampling or enumeration of catches by ODFW personnel.

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert.

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2017(Temp), f. 6-6-17, cert. ef. 6-8-17 thru 9-30-17; DFW 71-2017(Temp), f. 6-13-17, cert. ef. 6-17-17 thru 6-18-17

Rule Caption: Pacific Halibut Recreational All-Depth Season from Leadbetter Point, WA to Cape Falcon, OR Re-opened

Adm. Order No.: DFW 71-2017(Temp)

Filed with Sec. of State: 6-13-2017

Certified to be Effective: 6-17-17 thru 6-18-17

Notice Publication Date:

Rules Amended: 635-039-0085

Rules Suspended: 635-039-0085(T)

Subject: This amended rule re-opens the recreational all-depth Pacific halibut season, by one additional day, in the area between Leadbetter Point, Washington and Cape Falcon, Oregon beginning at 12:01 a.m. Saturday, June 17, 2017 and ending 11:59 p.m. Saturday, June 17, 2017. The National Oceanic & Atmospheric Administration (NOAA), International Pacific Halibut Commission (IPHC), Washington Department of Fish and Wildlife (WDFW), and the Department (ODFW) conferred on June 8, 2017 in order to increase angler opportunity to more fully attain the quota.

Rules Coordinator: Michelle Tate—(503) 947-6044

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:

(a) Title 50 of the Code of Federal Regulations, Part 300, Subpart E (October 1, 2016 ed.), as amended;

(b) Federal Register Vol. 82, No. 43, dated March 7, 2017; and

(c) Federal Register Vol. 82, No. 75, dated April 20, 2017.

(2) Therefore, persons must consult all publications referenced in this rule in addition to division 039 to determine applicable halibut fishing seasons.

(3) Effective 11:59 p.m., Thursday, May 25, 2017 the Columbia River Subarea (Leadbetter Point, WA to Cape Falcon, OR) all-depth season is closed to the retention of Pacific halibut.

(4) Beginning 12:01 a.m., Thursday, June 8, 2017 the Columbia River Subarea (Leadbetter Point, WA to Cape Falcon, OR) nearshore season is open to the retention of Pacific halibut seven days per week.

(5) Effective at 12:01 a.m., Saturday, June 17, 2017 through 11:59 p.m., Saturday, June 17, 2017 the Columbia River Subarea (Leadbetter Point, WA to Cape Falcon, OR) all-depth season is open 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; DFW 90-2007(Temp), f. 9-19-07, cert. ef. 9-20-07 thru 10-31-07; Administrative correction 11-17-07; DFW 57-2008(Temp), f. 5-30-08, cert. ef. 6-1-08 thru 7-31-08; DFW 81-2008(Temp), f. 7-11-08, cert. ef. 8-2-08 thru 9-30-08; DFW 92-2008(Temp), f. & cert. ef. 8-11-08 thru 9-30-08; DFW 101-2008(Temp), f. 8-25-08, cert. ef. 8-29-08 thru 9-30-08; DFW 107-2008(Temp), f. 9-5-08, cert. ef. 9-7-08 thru 12-31-08; DFW 111-2008(Temp), f. & cert. ef. 9-16-08 thru 12-31-08; DFW 120-2008(Temp), f. 9-25-08, cert. ef. 9-27-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 55-2009(Temp), f. & cert. ef. 5-22-09 thru 8-6-09; DFW 94-2009(Temp), f. 8-14-09, cert. ef. 8-16-09 thru 12-31-09; Administrative correction 1-25-10; DFW 32-2010, f. & cert. ef. 3-15-10; DFW 37-2010, f. 3-30-10, cert. ef. 4-1-10; DFW 100-2010(Temp), f. 7-15-10, cert. ef. 7-17-10 thru 10-31-10; DFW 118-2010(Temp), f. & cert. ef. 8-13-10 thru 10-31-10; Administrative correction 11-23-10; DFW 24-2011, f. & cert. ef. 3-22-11; DFW 58-2011(Temp), f. 5-27-11, cert. ef. 6-4-11 thru 8-4-11; DFW 82-2011(Temp), f. 6-30-11, cert. ef. 7-1-11 thru 8-4-11; DFW 85-2011(Temp), f. 7-5-11, cert. ef. 7-6-11 thru 10-31-11; DFW 114-2011(Temp), f. & cert. ef. 8-12-11 thru 10-31-11; DFW 135-2011(Temp), f. 9-21-11, cert. ef. 10-1-11 thru 12-31-11; DFW 39-2012, f. & cert. ef. 4-24-12; DFW 84-2012(Temp), f. & cert. ef. 7-5-12 thru 8-2-12; DFW 91-2012(Temp), f. 7-19-12, cert. ef. 7-22-12 thru 10-31-12; DFW 111-2012(Temp), f. 8-23-12, cert. ef. 8-24-12 thru 12-31-12; DFW 123-2012(Temp), f. 9-19-12, cert. ef. 9-24-12 thru 10-31-12; Administrative correction 11-23-12; DFW 65-2013(Temp), f. 6-27-13, cert. ef. 6-28-13 thru 8-2-13; DFW 78-2013(Temp), f. & cert. ef. 7-23-13 thru 10-31-13; DFW 86-2013(Temp), f. & cert. ef. 8-8-13 thru 10-31-13; Administrative correction, 11-22-13; DFW 36-2014, f. 4-29-14, cert. ef. 5-1-14; DFW 80-2014(Temp), f. 6-26-14, cert. ef. 6-27-14 thru 12-24-14; DFW 123-2014(Temp), f. & cert. ef. 8-21-14 thru 12-31-14; Administrative correction, 1-27-15; DFW 34-2015, f. & cert. ef. 4-28-15; DFW 56-2015(Temp), f. 6-2-15, cert. ef. 6-3-15 thru 9-30-15; DFW 65-2015(Temp), f. 6-10-15, cert. ef. 6-15-15 thru 9-30-15; Administrative correction, 10-22-15; DFW 35-2016, f. & cert. ef. 4-26-16; DFW 63-2016(Temp), f. 6-1-16, cert. ef. 6-2-16 thru 9-30-16; DFW 66-2016(Temp), f. 6-6-16, cert. ef. 6-8-16 thru 9-30-16; DFW 46-2017, f. & cert. ef. 4-24-17; DFW 62-2017(Temp), f. 5-24-17, cert. ef. 5-25-17 thru 9-30-17; DFW 67-

Rule Caption: Commercial Sales of Dressed Salmon and Steelhead by Columbia River Treaty Tribal Fishers Allowed

Adm. Order No.: DFW 72-2017(Temp)

Filed with Sec. of State: 6-14-2017

Certified to be Effective: 6-14-17 thru 12-9-17

Notice Publication Date:

Rules Amended: 635-006-0212, 635-006-0215, 635-006-0225

Subject: These amended rules allow commercial sales of gilled and gutted Columbia River salmon and steelhead caught by Treaty tribal members to wholesale fish dealers, canners, and buyers. Modifications also require wholesale fish dealers, canners, and buyers to report totals of fish purchased in landed weights on the Fish Receiving Ticket. Any gilled and gutted salmon and steelhead trout must be reported using the appropriate conversion code (60) which applies a conversion factor of 1.17 to convert dressed pounds to round pounds.

Rules Coordinator: Michelle Tate—(503) 947-6044

635-006-0212

Fish Receiving Ticket — Salmon

(1) This regulation is in addition to, and not in lieu of the provisions contained in OAR 635-006-0210.

(2) Fish receiving tickets shall be completed at time of landing and the original copy forwarded within four consecutive days following the landing to the Oregon Department of Fish and Wildlife.

(3) For troll-caught salmon, fish receiving tickets shall show the number of days fished during the trip in which the salmon were caught.

(4) It is lawful for licensed wholesale fish dealers, canners, or buyers to purchase from tribal fishers, referred to in OAR 635-041-0005, gilled and gutted Columbia River salmon lawfully taken by treaty Indians during commercial fishing seasons. The licensed wholesale dealer must submit landed weights on the Fish Receiving Ticket, any gilled and gutted salmon must be reported using the appropriate condition code (60) which uses the conversion factor of 1.17 listed in OAR 635-006-0215 for tribal Columbia River salmon and steelhead trout.

Stat. Auth.: ORS 506.036, 506.109, 506.119, 506.129, 508.530 & 508.535

Stats. Implemented: ORS 506.109, 506.129, 508.025, 508.040 & 508.550

Hist.: FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; DFW 63-2003, f. & cert. ef. 7-17-03; DFW 31-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 44-2006(Temp), f. & cert. ef. 6-19-06 thru 12-15-06; Administrative correction 12-16-06; DFW 79-2008(Temp) f. & cert. ef. 7-10-08 thru 12-31-08; Administrative correction 1-23-09; DFW 70-2009(Temp), f. 6-15-09, cert. ef. 6-16-09 thru 12-12-09; DFW 47-2010(Temp), f. 4-26-10, cert. ef. 4-27-10 thru 10-23-10; DFW 102-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 83-2012(Temp), f. & cert. ef. 7-5-12 thru 12-31-12; Administrative correction, 2-1-13; DFW 68-2013(Temp), f. & cert. ef. 7-3-13 thru 12-30-13; Administrative correction, 2-5-14; DFW 106-2014(Temp), f. 7-30-14, cert. ef. 8-1-14 thru 12-31-14; Administrative correction, 1-27-15; DFW 28-2015(Temp), f. 4-9-15, cert. ef. 5-1-15 thru 10-27-15; DFW 31-2015, f. & cert. ef. 4-27-15; DFW 33-2015(Temp), f. 4-28-15, cert. ef. 5-1-15 thru 10-27-15; Administrative correction, 11-20-15; DFW 51-2016(Temp), f. 5-17-16, cert. ef. 5-18-16 thru 11-13-16; Administrative correction, 6-5-17; DFW 72-2017, f. & cert. ef. 6-14-17 thru 12-9-17

635-006-0215

Monthly Remittance Report

(1) A monthly report is required of all licensed:

(a) Wholesale fish dealers, wholesale fish bait dealers, food fish canners, or shellfish canners receiving food fish or shellfish from licensed commercial fishers or bait fishers;

(b) Limited Fish Sellers selling food fish or shellfish.

(2) Except as provided in OAR 635-006-0220, the report is required even though no food fish or shellfish are received or sold during the calendar month covered by the report.

(3) The following information shall be included on the report:

(a) Fish dealer's name, license number, and address;

(b) Calendar month of the report;

(c) Serial numbers of all Fish Receiving Tickets issued during the month;

(d) Total pounds of all salmon and steelhead received or sold during the calendar month on which poundage fees are due. Salmon and steelhead may be reported as round weight, dressed head on or dressed head off;

(e) Total value of salmon and steelhead received or sold during the calendar month including fish eggs and parts;

(f) Total value of all other food fish and shellfish including eggs and parts;

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(g) Total pounds in the round of all other species of food fish or shellfish received or sold during the calendar month on which taxes are due. When landed in a dressed condition, the following listed species may be converted to round weight for the purposes of completing monthly reports, by multiplying each applicable below-listed factor by the dressed weight of that species:

- (A) Troll salmon:
 - (i) Gilled and gutted 1.15
 - (ii) Gilled, gutted, and headed 1.30
- (B) Tribal Columbia River salmon and steelhead trout:
 - (i) Gilled and gutted 1.17
- (C) Halibut:
 - (i) Gilled and gutted 1.15
 - (ii) Gilled, gutted, and headed 1.35
- (D) Sablefish, gutted and headed 1.60
- (E) Pacific whiting:
 - (i) Fillet 2.86
 - (ii) Headed and gutted 1.56
 - (iii) Headed and gutted with tail removed 2.0
- (F) Thresher shark 2.0
- (G) Lingcod:
 - (i) Gilled and gutted 1.1
 - (ii) Gilled, gutted and headed 1.5
- (H) Spot prawn, tails 2.24
- (I) Rockfish (including thornyheads), except Pacific Ocean Perch:
 - (i) Gilled and gutted 1.14
 - (ii) Gutted and headed 1.75
 - (iii) Gutted and headed, with collarbone still attached to body (western cut) 1.66
 - (iv) Gutted and headed, with collarbone removed from body (eastern cut) 2.0
- (J) Pacific Ocean Perch:
 - (i) Gilled and gutted 1.14
 - (ii) Gutted and headed 1.6
- (K) Pacific Cod, gutted and headed 1.58
- (L) Dover sole, English sole, and "other flatfish" as defined in Title 50 of the Code of Federal Regulations, part 660 Subpart C, gutted and headed 1.53
- (M) Petrale sole, gutted and headed 1.51
- (N) Arrowtooth flounder, gutted and headed 1.35
- (O) Starry flounder, gutted and headed 1.49
- (P) Groundfish, glazed:
 - (i) Conversion factors must be calculated for each landing for each species or species group categorized in OAR 635-006-0209 when there are 60 or greater individuals of a category in a single landing as follows:
 - (I) Weigh a sample of at least 20 glazed fish to obtain the glazed weight;
 - (II) Completely remove glaze from individual fish making up the sample;
 - (III) Re-weigh the sample to obtain the non-glazed weight;
 - (IV) Divide the non-glazed weight by the glazed weight to obtain the conversion factor;
 - (V) A separate conversion factor may be calculated for each size grade of a species, but may only be applied to landings of that size grade;
 - (VI) Documentation of this calculation must be retained with the dock receiving ticket.
 - (ii) A conversion factor of 0.95 must be applied when there are fewer than 60 individuals of any species or species group categorized in OAR 635-006-0209 in a single landing.
- (h) Total value of food fish landed in another state but not taxed by that state:
 - (i) Total pounds in the round of all food fish landed in another state but not taxed by that state;
 - (j) Total fees due — in accordance with ORS 508.505 the fees are the value of the food fish at the point of landing multiplied by the following rates:
 - (A) All salmon and steelhead, 3.15 percent.
 - (B) Effective January 1, 2005, all black rockfish, blue rockfish and nearshore fish (as defined by ORS 506.011), 5.00 percent.
 - (C) Effective January 1, 2010, all other food fish (except tuna, shellfish, crab, shrimp, sablefish, and whiting, as defined by ORS 508.505) and all other groundfish, 2.25 percent.
 - (D) All tuna (as defined by ORS 508.505), 1.09 percent.
 - (E) All crab, 2.35 percent.
 - (F) All sablefish, 2.40 percent.

- (G) All sardines, 2.25 percent.
- (H) All shellfish, 2.30 percent.
- (I) All shrimp, 2.40 percent.
- (J) All whiting, 2.30 percent.
- (k) Signature of the individual completing the report.
- (4) The monthly report and all landing fees due shall be sent to the Department on or before the 20th of each month for the preceding calendar month. Landing fees are delinquent if not received or postmarked within 20 days after the end of the calendar month. A penalty charge of \$5 or five percent of the landing fees due, whichever is larger, shall be assessed along with a one percent per month interest charge on any delinquent landing fee payments.

Stat. Auth.: ORS 506.036, 506.109, 506.119, 506.129, 508.530
Other Auth.: SB 247 (2015)
Stats. Implemented: ORS 506.109, 506.129, 508.535, 508.505, 508.550
Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 274(74-6), f. 3-20-74, ef. 4-11-74; FWC 28, f. 11-28-75, ef. 1-1-76, Renumbered from 625-040-0140; FWC 48-1978, f. & ef. 9-27-78, Renumbered from 635-036-0585; FWC 17-1981(Temp), f. & ef. 5-22-81; FWC 25-1981(Temp), f. 7-8-81, ef. 7-15-81; FWC 27-1981, f. & ef. 8-14-81; FWC 1-1986, f. & ef. 1-10-86; FWC 4-1987, f. & ef. 2-6-87; FWC 99-1987, f. & ef. 11-17-87; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 22-1992(Temp), f. 4-10-92, cert. ef. 4-13-92, FWC 53-1992, f. 7-17-92, cert. ef. 7-20-92; FWC 5-1993, f. 1-22-93, cert. ef. 1-25-93; DFW 38-1999, f. & cert. ef. 5-24-99; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 31-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 118-2005(Temp), f. & cert. ef. 10-10-05 thru 12-31-05; DFW 139-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2008(Temp) f. & cert. ef. 7-10-08 thru 12-31-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 70-2009(Temp), f. 6-15-09, cert. ef. 6-16-09 thru 12-12-09; DFW 73-2009(Temp), f. 6-24-09, cert. ef. 6-25-09 thru 12-21-09; Administrative correction 12-23-09; DFW 39-2010(Temp), f. 3-30-10, cert. ef. 4-1-10 thru 9-27-10; DFW 47-2010(Temp), f. 4-26-10, cert. ef. 4-27-10 thru 10-23-10; Administrative correction 11-23-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; DFW 102-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 164-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 83-2012(Temp), f. & cert. ef. 7-5-12 thru 12-31-12; DFW 151-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 68-2013(Temp), f. & cert. ef. 7-3-13 thru 12-30-13; Administrative correction, 2-5-14; DFW 106-2014(Temp), f. 7-30-14, cert. ef. 8-1-14 thru 12-31-14; DFW 4-2015, f. 1-13-15, cert. ef. 1-15-15; DFW 28-2015(Temp), f. 4-9-15, cert. ef. 5-1-15 thru 10-27-15; DFW 139-2015, f. 10-14-15, cert. ef. 1-1-16; DFW 51-2016(Temp), f. 5-17-16, cert. ef. 5-18-16 thru 11-13-16; Administrative correction, 6-5-17; DFW 72-2017, f. & cert. ef. 6-14-17 thru 12-9-17

635-006-0225 Purchase, Record, Report, and Sale of Steelhead Trout and Walleye from Treaty Indian Fisheries

(1) Steelhead trout and walleye lawfully taken by treaty Indians during commercial fishing seasons may be purchased by licensed wholesale fish dealers, canners, or buyers pursuant to restrictions set forth in sections (2) through (4) of this rule. In addition, steelhead trout and walleye taken lawfully by treaty Indians during commercial fishing seasons may be purchased and/or possessed by any individual pursuant to restrictions set forth in section (5) of this rule.

(2) The wholesale fish dealer, canner, or buyer, shall at the time of purchase, enter the purchase of steelhead trout and walleye on a Department Columbia River Fish Receiving Ticket. Information required to be entered on the Fish Receiving Ticket shall be the same as required by OAR 635-006-0210 and 635-006-0212 for each purchase of food fish.

(3) The record keeping and reporting requirements for food fish as set forth in OAR 635-006-0200 through 635-006-0215 shall apply to all steelhead trout and walleye purchases. The landed weights of all gilled and gutted steelhead trout must be submitted by the licensed wholesale fish dealer, canner, or buyer by using the appropriate condition code (60) that applies a conversion factor of 1.17 listed in OAR 635-006-0215 for tribal Columbia River salmon and steelhead trout.

(4) In addition to the records required in connection with the purchase of steelhead trout, and walleye, a record of all sales of steelhead trout and walleye shall be maintained by licensed wholesale fish dealers, canners, or buyers for a period of three years and shall be subject to inspection by the Department, the Director's authorized agent or the Oregon State Police. Such record of sales shall include as a minimum:

- (a) Name and address of each person to whom either steelhead or walleye are sold;
- (b) Quantity in pounds of each sale identified as whole or round weight or dressed weight; and
- (c) Date of each delivery.

(5) Steelhead trout and walleye taken lawfully by treaty Indians during commercial fishing seasons may be purchased from a treaty Indian and/or possessed by any individual so long as said fish are accompanied by a written document listing treaty Indian taker's name, tribal enrollment number, number of fish, approximate weight of each fish, date and location where taken, date of sale, and purchaser's name. It is unlawful for any individual other than a treaty Indian to sell steelhead trout or walleye. The provisions in this section (5) apply to individuals other than licensed wholesale fish dealers, canners and buyers.

Stat. Auth.: ORS 506.119, 508.530 & 509.031

ADMINISTRATIVE RULES

Stats. Implemented: ORS 498.022, 506.129, 508.535 & 508.550
Hist.: FWC 39, f. & cert. ef. 1-23-76, Renumbered from 625-040-0150, Renumbered from 635-036-0595; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 41-1995, f. 5-23-95, cert. ef. 5-24-95; FWC 51-1997(Temp), f. & cert. ef. 8-27-97; DFW 73-1998, f. & cert. ef. 8-28-98; DFW 32-2008(Temp), f. & cert. ef. 4-1-08 thru 9-27-08; DFW 79-2008(Temp), f. & cert. ef. 7-10-08 thru 12-31-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 70-2009(Temp), f. 6-15-09, cert. ef. 6-16-09 thru 12-12-09; Administrative correction 12-23-09; DFW 47-2010(Temp), f. 4-26-10, cert. ef. 4-27-10 thru 10-23-10; Administrative correction 11-23-10; DFW 102-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 77-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 83-2012(Temp), f. & cert. ef. 7-5-12 thru 12-31-12; DFW 101-2012, f. & cert. ef. 8-6-12; DFW 68-2013(Temp), f. & cert. ef. 7-3-13 thru 12-30-13; Administrative correction, 2-5-14; DFW 106-2014(Temp), f. 7-30-14, cert. ef. 8-1-14 thru 12-31-14; Administrative correction, 1-27-15; DFW 28-2015(Temp), f. 4-9-15, cert. ef. 5-1-15 thru 10-27-15; Administrative correction, 11-20-15; DFW 51-2016(Temp), f. 5-17-16, cert. ef. 5-18-16 thru 11-13-16; Administrative correction, 6-5-17; DFW 72-2017, f. & cert. ef. 6-14-17 thru 12-9-17

Rule Caption: Modified 2017 White Sturgeon Recreational Fisheries in the Mainstem Columbia

Adm. Order No.: DFW 73-2017(Temp)

Filed with Sec. of State: 6-15-2017

Certified to be Effective: 6-15-17 thru 11-19-17

Notice Publication Date:

Rules Amended: 635-023-0095

Rules Suspended: 635-023-0095(T)

Subject: This amended rule closes the previously set fishing date of Saturday June 17, 2017 for the Estuary sturgeon fishery and adds an additional retention date for Bonneville Pool. The guideline has been reached for the Estuary fishery but additional fish remain available on the Bonneville Pool guideline.

Rules Coordinator: Michelle Tate—(503) 947-6044

635-023-0095

Sturgeon Season

(1) The 2017 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 2017 Oregon Sport Fishing Regulations.

(2) Retention of white sturgeon in Zone 6 of the mainstem Columbia River is prohibited as follows:

(a) From The Dalles Dam upstream to John Day Dam (The Dalles Pool), including adjacent tributaries, beginning 12:01 a.m. Saturday March 25, 2017.

(b) From Bonneville Dam upstream to The Dalles Dam (Bonneville Pool), including adjacent tributaries, beginning 12:01 Saturday March 25 through Thursday June 22, 2017 and Saturday June 24 through December 31, 2017.

(c) From the John Day Dam upstream to McNary Dam (John Day Pool) including adjacent tributaries, beginning 12:01 a.m. Thursday March 30, 2017.

(2) Retention of white sturgeon from Bonneville Dam upstream to The Dalles Dam (Bonneville Pool), including adjacent tributaries, is allowed on Friday June 23, 2017.

(a) Only white sturgeon between 38 and 54 inches fork length may be retained.

(b) All other permanent rules apply including sanctuary closures.

(3) Retention of white sturgeon in the lower Columbia River downstream of Bonneville Dam is allowed as follows:

(a) White sturgeon between 44 and 50 inches fork length may be retained three days per week (Monday, Wednesday, Saturday) beginning Monday June 5 through Wednesday June 14, 2017 in the mainstem Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay and all adjacent Washington tributaries;

(b) On days open to sturgeon retention, angling for sturgeon (including catch and release) is prohibited after 2:00 p.m.

(c) Fork length is measured in a straight line from the tip of the nose to the fork in caudal fin (tail) with the fish laying on its side on a flat surface, with the tape measure or ruler positioned flat under the fish.

(d) All other permanent rules apply.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: DFW 129-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05; DFW 65-2005(Temp), f. 6-30-05, cert. ef. 7-10-05 thru 12-31-05; DFW 76-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06;

DFW 5-2006, f. & cert. ef. 2-15-06; DFW 19-2006(Temp), f. 4-6-06, cert. ef. 4-8-06 thru 7-31-06; DFW 54-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-27-06; DFW 62-2006(Temp), f. 7-13-06, cert. ef. 7-24-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 20-2007(Temp), f. 3-26-07, cert. ef. 3-28-07 thru 7-30-07; DFW 38-2007(Temp), f. & cert. ef. 5-31-07 thru 11-26-07; DFW 59-2007(Temp), f. 7-18-07, cert. ef. 7-29-07 thru 12-31-07; DFW 75-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 102-2007(Temp), f. 9-28-07, cert. ef. 10-1-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 8-2008, f. & cert. ef. 2-11-08; DFW 23-2008(Temp), f. 3-12-08, cert. ef. 3-15-08 thru 9-10-08; DFW 28-2008(Temp), f. 3-24-08, cert. ef. 3-26-08 thru 9-10-08; DFW 72-2008(Temp), f. 6-30-08, cert. ef. 7-10-08 thru 12-31-08; DFW 78-2008(Temp), f. 7-9-08, cert. ef. 7-12-08 thru 12-31-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 18-2009, f. & cert. ef. 2-26-09; DFW 33-2009(Temp), f. 4-2-09, cert. ef. 4-13-09 thru 10-9-09; DFW 63-2009(Temp), f. 6-3-09, cert. ef. 6-6-09 thru 10-9-09; DFW 83-2009(Temp), f. 7-8-09, cert. ef. 7-9-09 thru 12-31-09; DFW 86-2009(Temp), f. 7-22-09, cert. ef. 7-24-09 thru 10-9-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 13-2010(Temp), f. 2-16-10, cert. ef. 2-21-10 thru 7-31-10; DFW 19-2010(Temp), f. 2-26-10, cert. ef. 3-1-10 thru 8-27-10; DFW 34-2010, f. 3-16-10, cert. ef. 4-1-10; DFW 49-2010(Temp), f. 4-27-10, cert. ef. 4-29-10 thru 7-31-10; DFW 50-2010(Temp), f. 4-29-10, cert. ef. 5-6-10 thru 11-1-10; DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; DFW 91-2010(Temp), f. 6-29-10, cert. ef. 8-1-10 thru 12-31-10; DFW 99-2010(Temp), f. 7-13-10, cert. ef. 7-15-10 thru 12-31-10; DFW 165-2010(Temp), f. 12-28-10, cert. ef. 1-1-11 thru 6-29-11; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 11-2011(Temp), f. 2-10-11, cert. ef. 2-11-11 thru 7-31-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 26-2011(Temp), f. 4-5-11, cert. ef. 4-10-11 thru 9-30-11; DFW 74-2011(Temp), f. 6-24-11, cert. ef. 6-27-11 thru 7-31-11; DFW 87-2011(Temp), f. 7-8-11, cert. ef. 7-9-11 thru 7-31-11; DFW 96-2011(Temp), f. 7-20-11, cert. ef. 7-30-11 thru 12-31-11; DFW 129-2011(Temp), f. 9-15-11, cert. ef. 9-30-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 1-2012(Temp), f. & cert. ef. 1-5-12 thru 7-2-12; DFW 10-2012, f. & cert. ef. 2-7-12; DFW 16-2012(Temp), f. 2-14-12, cert. ef. 2-18-12 thru 7-31-12; DFW 44-2012(Temp), f. 5-1-12, cert. ef. 5-20-12 thru 7-31-12; DFW 73-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 8-31-12; DFW 97-2012(Temp), f. 7-30-12, cert. ef. 8-1-12 thru 12-31-12; DFW 129-2012(Temp), f. 10-3-12, cert. ef. 10-20-12 thru 12-31-12; DFW 140-2012(Temp), f. 10-31-12, cert. ef. 11-4-12 thru 12-31-12; DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 154-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 2-28-13; DFW 12-2013(Temp), f. 2-12-13, cert. ef. 2-28-13 thru 7-31-13; DFW 23-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-27-13; DFW 47-2013(Temp), f. 5-30-13, cert. ef. 6-14-13 thru 9-30-13; DFW 59-2013(Temp), f. 6-19-13, cert. ef. 6-21-13 thru 10-31-13; DFW 64-2013(Temp), f. 6-27-13, cert. ef. 6-29-13 thru 10-31-13; DFW 104-2013(Temp), f. 9-13-13, cert. ef. 10-19-13 thru 12-31-13; DFW 126-2013(Temp), f. 10-31-13, cert. ef. 11-12-13 thru 12-31-13; DFW 135-2013(Temp), f. 12-12-13, cert. ef. 1-1-14 thru 1-31-14; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 5-2014(Temp), f. 1-30-14, cert. ef. 2-1-14 thru 7-30-14; DFW 14-2014(Temp), f. 2-20-14, cert. ef. 2-24-14 thru 7-31-14; DFW 27-2014(Temp), f. 3-28-14, cert. ef. 5-1-14 thru 7-31-14; DFW 56-2014(Temp), f. 6-9-14, cert. ef. 6-13-14 thru 7-31-14; DFW 87-2014(Temp), f. 7-2-14, cert. ef. 7-11-14 thru 12-31-14; DFW 94-2014(Temp), f. & cert. ef. 7-14-14 thru 12-31-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 166-2014(Temp), f. 12-18-14, cert. ef. 1-1-15 thru 3-1-15; Administrative correction, 3-23-15; DFW 41-2015(Temp), f. & cert. ef. 5-12-15 thru 7-31-15; DFW 54-2015(Temp), f. 5-28-15, cert. ef. 6-3-15 thru 7-31-15; DFW 89-2015(Temp), f. 7-16-15, cert. ef. 7-18-15 thru 9-30-15; Temporary suspended by DFW 122-2015(Temp), f. 8-31-15, cert. ef. 9-1-15 thru 9-30-15; Administrative correction, 10-22-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16; DFW 7-2016(Temp), f. 1-28-16, cert. ef. 2-8-16 thru 8-05-16; DFW 36-2016(Temp), f. 4-26-16, cert. ef. 5-1-16 thru 7-31-16; DFW 42-2016(Temp), f. 4-27-16, cert. ef. 4-30-16 thru 7-31-16; DFW 56-2016(Temp), f. 5-25-16, cert. ef. 5-29-16 thru 11-24-16; DFW 79-2016(Temp), f. 6-23-16, cert. ef. 6-30-16 thru 12-26-16; DFW 153-2016, f. 12-28-16, cert. ef. 1-1-17; DFW 24-2017(Temp), f. 3-14-17, cert. ef. 3-25-17 thru 9-20-17; DFW 31-2017(Temp), f. 3-28-17, cert. ef. 3-30-17 thru 9-25-17; DFW 66-2017(Temp), f. 6-2-17, cert. ef. 6-5-17 thru 11-19-17; DFW 73-2017(Temp), f. & cert. ef. 6-15-17 thru 11-19-17

Rule Caption: 2017 Columbia River Summer Recreational Fisheries Implemented

Adm. Order No.: DFW 74-2017(Temp)

Filed with Sec. of State: 6-15-2017

Certified to be Effective: 6-16-17 thru 7-31-17

Notice Publication Date:

Rules Amended: 635-023-0128

Subject: This amended rule implements the 2017 summer recreational salmon fishing season on the Columbia River. Modifications to regulations for 2017 conform to regulation changes developed through this year's Pacific Fishery Management Council/North of Falcon process. Corrections to the regulations were made to ensure rule consistency with the State of Washington.

Rules Coordinator: Michelle Tate—(503) 947-6044

635-023-0128

Summer Sport Fishery

(1) The 2017 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 2017 Oregon Sport Fishing Regulations.

(2) Retention of hatchery Chinook (adults and jacks), sockeye, and hatchery steelhead is allowed in the mainstem Columbia River from the Astoria-Megler Bridge upstream to the Oregon/Washington border (above McNary Dam) beginning June 16 through July 31.

ADMINISTRATIVE RULES

(a) The daily bag limit is two adult salmonids, of which no more than one may be a steelhead and five jacks. All sockeye are considered adults in the daily limit and must be recorded as adults on the combined angling tag.

(b) Night closure in effect except for anglers enrolled in the Pikeminnow Sport-Reward Program.

(c) All other permanent rules for the Columbia River angling zone, as stated in the **2017 Oregon Sport Fishing Regulations**, remain in effect.

[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 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 52-2005(Temp), f. 6-3-05, cert. ef. 6-16-05 thru 7-31-05; DFW 64-2005(Temp), f. 6-30-05, cert. ef. 7-1-05 thru 7-31-05; Administrative correction 8-17-05; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 51-2007(Temp), f. 6-29-07, cert. ef. 7-2-07 thru 7-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 61-2008(Temp), f. 6-13-08, cert. ef. 6-16-08 thru 7-31-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08; DFW 71-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 8-31-08; Administrative correction 9-29-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 52-2009, f. & cert. ef. 5-18-09; DFW 69-2009(Temp), f. 6-11-09, cert. ef. 6-16-09 thru 7-31-09; Administrative correction 8-21-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 77-2010, f. 6-8-10, cert. ef. 6-16-10; DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; Administrative correction 8-18-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 65-2011(Temp), f. 6-14-11, cert. ef. 6-16-11 thru 7-31-11; DFW 95-2011(Temp), f. 7-15-11, cert. ef. 7-18-11 thru 7-31-11; Administrative correction 9-23-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 64-2012(Temp), f. 6-12-12, cert. ef. 6-16-12 thru 7-31-12; [DFW 85-2012(Temp), f. 7-6-12, cert. ef. 7-9-12 thru 8-31-12; Temporary Suspended by DFW 100-2012(Temp), f. 7-31-12, cert. ef. 8-1-12 thru 12-31-12]; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 55-2013(Temp), f. 6-12-13, cert. ef. 6-16-13 thru 7-31-13; DFW 66-2013(Temp), f. & cert. ef. 6-27-13 thru 7-31-13; DFW 70-2013(Temp), f. 7-11-13, cert. ef. 7-13-13 thru 7-31-13; Administrative correction, 8-21-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 68-2014(Temp), f. 6-12-14, cert. ef. 6-16-14 thru 7-31-14; DFW 85-2014(Temp), f. 7-2-14, cert. ef. 7-3-14 thru 7-31-14; DFW 92-2014(Temp), f. 7-10-14, cert. ef. 7-11-14 thru 7-31-14; Administrative correction, 8-28-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 61-2015(Temp), f. 6-8-15, cert. ef. 6-16-15 thru 7-31-15; DFW 79-2015(Temp), f. 6-30-15, cert. ef. 7-3-15 thru 7-31-15; Administrative correction, 8-18-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16; DFW 77-2016(Temp), f. 6-15-16, cert. ef. 6-16-16 thru 7-31-16; Administrative correction, 8-29-16; DFW 153-2016, f. 12-28-16, cert. ef. 1-1-17; DFW 74-2017(Temp), f. 6-15-17, cert. ef. 6-16-17 thru 7-31-17

Rule Caption: Treaty Indian Commercial Summer Salmon Fisheries Set

Adm. Order No.: DFW 75-2017(Temp)

Filed with Sec. of State: 6-15-2017

Certified to be Effective: 6-15-17 thru 7-31-17

Notice Publication Date:

Rules Amended: 635-041-0045, 635-041-0076

Subject: These amended rules authorize the sales of fish caught in Treaty Indian commercial summer salmon gillnet and hook-and-line fisheries both above and below Bonneville Dam in the Columbia River beginning 6:00 a.m. Friday, June 16, 2017. Modifications are consistent with action taken June 14, 2017 by the Departments of Fish and Wildlife for the States of Oregon and Washington in cooperation with the Columbia River Treaty Tribes at a meeting of the Columbia River Compact.

Rules Coordinator: Michelle Tate—(503) 947-6044

635-041-0045

Closed Commercial Fishing Areas

Unless otherwise specified in this rule and OAR 635-041-0063, the following waters are closed to commercial fishing:

(1) All Oregon tributaries of the Columbia River.

(2) The Columbia River westerly and downstream of the Bridge of the Gods except:

(a) Fisheries conducted by the Yakama, Warm Springs, Nez Perce and Umatilla tribes downstream of Bonneville Dam (bank fishing only) under provisions of the agreements with the states of Oregon and Washington are open until further notice.

(A) Allowable sales include salmon, steelhead, shad, yellow perch, bass, walleye, catfish and carp which may be sold at any time if landed during an open treaty commercial fishing period. Sturgeon caught in the tribal fisheries below Bonneville Dam may not be retained or sold. Fish may not be sold on USACE property below Bonneville Dam, but may be caught and transported off USACE property for sale.

(B) Gear is restricted to subsistence fishing gear which includes hoop-nets, dipnets, spears, gaffs, clubs, fouling hooks and rod and reel with hook-and-line.

(b) Platform and hook-and-line fisheries from the Bridge of the Gods downstream to the subsistence fishing deadline as described in OAR 635-041-0020(1) are open to commercial sales whenever sales are authorized

for platform and hook-and-line fisheries in the remainder of Bonneville Pool.

(3) The Columbia River easterly and upstream of a line extending at a right angle across the thread of the river from a deadline marker one mile downstream of McNary Dam.

(4) The Columbia River between a line extending at a right angle across the thread of the river from a deadline marker at the west end of 3-Mile Rapids located approximately 1.8 miles below The Dalles Dam, upstream to a line from a deadline marker on the Oregon shore located approximately 3/4 mile above The Dalles Dam east fishway exit, thence at a right angle to the thread of the river to a point in midriver, thence downstream to Light "1" on the Washington shore; except that dip nets, bag nets, and hoop nets are permitted during commercial salmon and shad fishing seasons at the Lone Pine Indian fishing site located immediately above The Dalles Interstate Bridge.

(5) The Columbia River between a line extending at a right angle across the thread of the river from a deadline marker at Preachers Eddy light below the John Day Dam and a line approximately 4.3 miles upstream extending from a marker on the Oregon shore approximately one-half mile above the upper easterly bank of the mouth of the John Day River, Oregon, extending at a right angle across the thread of the river to a point in midriver, thence turning downstream to a marker located on the Washington shore approximately opposite the mouth of the John Day River.

(6) The Columbia River within areas at and adjacent to the mouths of the Deschutes River and the Umatilla River. The closed areas are along the Oregon side of the Columbia River and extend out to the midstream from a point one-half mile above the intersection of the upper bank of the tributary with the Columbia River to a point one mile downstream from the intersection of the lower bank of the tributary with the Columbia River. All such points are posted with deadline markers.

(7) The Columbia River within an area and adjacent to the mouth of the Big White Salmon River. The closed area is along the Washington side of the Columbia River and extends out to midstream at right angles to the thread of the Columbia River between a marker located 1/2 mile downstream from the west bank upstream to Light "35".

(8) The Columbia River within an area at and adjacent to the mouth of Drano Lake (Little White Salmon River). The closed area is along the Washington side of the Columbia River and extends out to midstream at right angles to the thread of the Columbia River between Light "27" upstream to a marker located approximately 1/2 mile upriver of the outlet of Drano Lake.

(9) The Columbia River within an area and adjacent to the mouth of the Wind River. The closed area is along the Washington side of the Columbia River and extends to midstream at right angles to the thread of the Columbia River between markers located 1 1/4 miles downstream from the west bank and 1/2 mile upstream from the east bank.

(10) The Columbia River within areas at and adjacent to the mouth of Hood River. The closed area is along the Oregon side of the Columbia River and extends to midstream at right angles to the thread of the Columbia River between markers located approximately 0.85 miles downriver from the west bank at end of the breakwall at the west end of the Port of Hood River and 1/2 mile upriver from the east bank.

(11) The Columbia River within a radius of 150 feet of the Spring Creek Hatchery fishway, except that during the period of August 25-September 20 inclusive the closed area is along the Washington side of the Columbia River and extends to midstream at right angles to the thread of the Columbia River between a marker located 1 1/2 miles downriver of the Spring Creek Hatchery fishway up to the downstream marker of the Big White Salmon sanctuary located approximately 1/2 mile upriver of the Spring Creek Hatchery fishway.

(12) Herman Creek upstream from a line between deadline markers near the mouth. One marker is located on the east bank piling and the other is located on the west bank to the north of the boat ramp.

(13) The Columbia River within an area and adjacent to the mouth of the Klickitat River. The closed area is along the Washington side of the Columbia River and extends to midstream at right angles to the thread of the Columbia River between the downstream margin of Lyle Landing downstream to a marker located near the railroad tunnel approximately 1 1/8 miles downstream from the west bank.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 89, f. & ef. 1-28-77; FWC 133, f. & ef. 8-4-77; FWC 149(Temp), f. & ef. 9-21-77 thru 1-18-78; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79, Renumbered from 635-035-0045; FWC 6-1980, f. & ef. 1-28-80; FWC 44-1980(Temp), f. & ef. 8-22-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 49-1983(Temp), f. & ef. 9-26-83; FWC 4-1984, f. & ef. 1-31-84; FWC 55-1985(Temp), f. & ef. 9-6-85; FWC 4-1986 (Temp), f. & ef. 1-28-86; FWC 25-1986(Temp), f. & ef. 6-25-86; FWC 42-1986, f. & ef. 8-15-86; FWC 2-1987, f. & ef. 1-23-87; FWC 10-1988, f. & cert.

ADMINISTRATIVE RULES

ef. 3-4-88; FWC 54-1989 (Temp), f. & cert. ef. 8-7-89; FWC 90-1989, f. & cert. ef. 9-6-89; FWC 80-1990 (Temp), f. 8-7-90, cert. ef. 8-8-90; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 40-2011 (Temp), f. & cert. ef. 5-5-11 thru 10-31-11; DFW 43-2011 (Temp), f. & cert. ef. 5-10-11 thru 10-31-11; DFW 60-2011 (Temp), f. 6-2-11, cert. ef. 6-6-11 thru 10-31-11; DFW 63-2011 (Temp), f. 6-8-11, cert. ef. 6-9-11 thru 10-31-11; DFW 66-2011 (Temp), f. 6-14-11, cert. ef. 6-16-11 thru 10-31-11; DFW 88-2011 (Temp), f. 7-8-11, cert. ef. 7-10-11 thru 10-31-11; DFW 119-2011 (Temp), f. 8-26-11, cert. ef. 8-29-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 5-2012 (Temp), f. 1-30-12, cert. ef. 2-1-12 thru 3-31-12; DFW 18-2012 (Temp), f. 2-28-12, cert. ef. 2-29-12 thru 6-15-12; DFW 46-2012 (Temp), f. 5-14-12, cert. ef. 5-15-12 thru 6-30-12; DFW 74-2012 (Temp), f. 6-29-12, cert. ef. 7-1-12 thru 10-31-12; DFW 87-2012 (Temp), f. 7-11-12, cert. ef. 7-12-12 thru 8-31-12; DFW 94-2012 (Temp), f. & cert. ef. 7-27-12 thru 10-31-12; DFW 119-2012 (Temp), f. 9-10-12, cert. ef. 9-11-12 thru 10-31-12; DFW 143-2012 (Temp), f. 11-7-12, cert. ef. 11-8-12 thru 1-29-13; DFW 8-2013 (Temp), f. 1-31-13, cert. ef. 2-1-13 thru 3-31-13; DFW 18-2013 (Temp), f. 3-5-13, cert. ef. 3-6-13 thru 6-15-13; DFW 57-2013 (Temp), f. 6-12-13, cert. ef. 6-16-13 thru 7-31-13; DFW 88-2013 (Temp), f. 8-9-13, cert. ef. 8-12-13 thru 12-31-13; DFW 116-2013 (Temp), f. 10-8-13, cert. ef. 10-9-13 thru 12-31-13; DFW 22-2014 (Temp), f. 3-11-14, cert. ef. 3-12-14 thru 7-31-14; DFW 37-2014 (Temp), f. & cert. ef. 5-6-14 thru 7-31-14; DFW 105-2014 (Temp), f. 7-30-14, cert. ef. 8-1-14 thru 10-31-14; DFW 153-2014 (Temp), f. 10-23-14, cert. ef. 10-31-14 thru 12-31-14; Administrative correction, 1-27-15; DFW 71-2015 (Temp), f. 6-15-15, cert. ef. 6-16-15 thru 7-31-15; DFW 97-2015 (Temp), f. 7-30-15, cert. ef. 8-1-15 thru 10-31-15; Administrative correction, 11-20-15; DFW 70-2016 (Temp), f. 6-13-16, cert. ef. 6-16-16 thru 7-31-16; DFW 98-2016 (Temp), f. 7-28-16, cert. ef. 8-1-16 thru 12-31-16; DFW 120-2016 (Temp), f. 9-15-16, cert. ef. 9-16-16 thru 12-31-16; Administrative correction, 6-5-17; DFW 75-2017 (Temp), f. & cert. ef. 6-15-17 thru 7-31-17

635-041-0076

Summer Salmon Season

(1) Salmon, steelhead, shad, yellow perch, bass, walleye, catfish and carp may be sold or retained for subsistence from the Columbia River Zone 6 Treaty Indian fishery during the following periods:

(a) 6:00 a.m. Monday, June 19 through 6:00 p.m. Thursday June 22, 2017 and 6:00 a.m. Monday June 26 through 6:00 p.m. Thursday June 29, 2017, with gear restricted to set and drift gill net with a 7-inch minimum mesh size restriction.

(b) 6:00 a.m. Friday June 16 through 11:59 p.m. Monday July 31, 2017 with gear restricted to subsistence fishing gear which includes hoop nets, bag nets, dip nets, and rod and reel with hook-and-line.

(c) Fish caught during any open period may be sold after the period concludes.

(d) White sturgeon between 38-54 inches in fork length caught in the Bonneville Pool and between 43-54 inches in fork length caught in The Dalles Pool and John Day pools may not be sold but may be retained for subsistence use.

(e) Closed areas as set forth in OAR 635-041-0045 remain in effect with the exception of Spring Creek Hatchery sanctuary.

(3) Effective 6:00 a.m. Friday June 16, 2017, commercial sales of salmon, steelhead, walleye, shad, catfish, carp, bass and yellow perch caught in Yakama Nation tributary fisheries in the Klickitat River, Wind River and Drano Lake, are allowed for Yakama Nation members during those days and hours when these tributaries are open under lawfully enacted Yakama Nation fishing periods.

(a) Sturgeon between 38-54 inches in fork length harvested in tributaries within Bonneville Pool may not be sold but may be kept for subsistence purposes.

(b) Gear is restricted to subsistence fishing gear which includes hoop nets, bag nets, dip nets, and rod and reel with hook-and-line. Gillnets may only be used in Drano Lake.

(c) Fish caught during any open period may be sold after the period concludes.

Stat. Auth.: ORS 496.118 & 506.119

Stats. Implemented: ORS 506.109, 506.129 & 507.030

Hist.: DFW 5-2006, f. & cert. ef. 2-15-06; DFW 39-2006 (Temp), f. & cert. ef. 6-8-06 thru 7-31-06; DFW 46-2006 (Temp), f. & cert. ef. 6-20-06 thru 7-31-06; DFW 49-2006 (Temp), f. 6-26-06, cert. ef. 6-27-06 thru 7-31-06; DFW 56-2006 (Temp), f. 6-30-06, cert. ef. 7-3-06 thru 7-31-06; DFW 58-2006 (Temp), f. 7-6-06, cert. ef. 7-10-06 thru 7-31-06; Administrative correction 8-22-06; DFW 46-2007 (Temp), f. 6-15-07, cert. ef. 6-16-07 thru 9-13-07; DFW 49-2007 (Temp), f. 6-22-07, cert. ef. 6-26-07 thru 9-13-07; DFW 53-2007 (Temp), f. & cert. ef. 7-6-07 thru 7-31-07; Administrative correction 9-16-07; DFW 45-2008 (Temp), f. 5-2-08, cert. ef. 5-5-08 thru 7-31-08; DFW 47-2008 (Temp), f. 5-9-08, cert. ef. 5-11-08 thru 7-31-08; DFW 62-2008 (Temp), f. 6-13-08, cert. ef. 6-16-08 thru 8-31-08; DFW 68-2008 (Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08; DFW 71-2008 (Temp), f. 6-27-08, cert. ef. 6-28-08 thru 8-31-08; DFW 80-2008 (Temp), f. & cert. ef. 7-10-08 thru 8-31-08; DFW 87-2008 (Temp), f. & cert. ef. 7-25-08 thru 8-31-08; DFW 94-2008 (Temp), f. & cert. ef. 8-14-08 thru 9-30-08; Administrative correction 10-21-08; DFW 50-2009 (Temp), f. 5-14-09, cert. ef. 5-16-09 thru 7-31-09; DFW 56-2009 (Temp), f. 5-26-09, cert. ef. 5-27-09 thru 7-31-09; DFW 71-2009 (Temp), f. 6-15-09, cert. ef. 6-16-09 thru 7-31-09; DFW 76-2009 (Temp), f. 6-26-09, cert. ef. 6-30-09 thru 7-31-09; DFW 82-2009 (Temp), f. 7-6-09, cert. ef. 7-8-09 thru 7-31-09; DFW 84-2009 (Temp), f. 7-13-09, cert. ef. 7-15-09 thru 7-31-09; Administrative correction 8-21-09; DFW 48-2010 (Temp), f. 4-26-10, cert. ef. 4-27-10 thru 7-31-10; DFW 51-2010 (Temp), f. & cert. ef. 4-29-10 thru 7-31-10; DFW 56-2010 (Temp), f. 5-10-10, cert. ef. 5-11-10 thru 7-31-10; DFW 68-2010 (Temp), f. 5-18-10, cert. ef. 5-19-10 thru 7-31-10; DFW 71-2010 (Temp), f. 5-19-10, cert. ef. 5-21-10 thru 6-16-10; DFW 74-2010 (Temp), f. & cert. ef. 6-2-10 thru 7-31-10; DFW 80-2010 (Temp), f. 6-14-10, cert. ef. 6-16-10 thru 7-31-10; DFW 87-2010 (Temp), f. 6-25-10, cert. ef. 6-29-10 thru 7-31-10; DFW 97-2010 (Temp), f. 7-8-10, cert. ef. 7-13-10 thru 7-31-10; DFW 101-2010 (Temp), f. 7-19-10, cert. ef. 7-20-10 thru

7-31-10; DFW 105-2010 (Temp), f. 7-23-10, cert. ef. 7-26-10 thru 7-31-10; Administrative correction 8-18-10; DFW 43-2011 (Temp), f. & cert. ef. 5-10-11 thru 10-31-11; DFW 66-2011 (Temp), f. 6-14-11, cert. ef. 6-16-11 thru 10-31-11; DFW 75-2011 (Temp), f. 6-24-11, cert. ef. 6-27-11 thru 10-31-11; DFW 84-2011 (Temp), f. 7-1-11, cert. ef. 7-5-11 thru 10-31-11; DFW 88-2011 (Temp), f. 7-8-11, cert. ef. 7-10-11 thru 10-31-11; DFW 94-2011 (Temp), f. 7-14-11, cert. ef. 7-18-11 thru 10-31-11; DFW 98-2011 (Temp), f. 7-20-11, cert. ef. 7-25-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 66-2012 (Temp), f. 6-14-12, cert. ef. 6-18-12 thru 7-31-12; DFW 81-2012 (Temp), f. 6-29-12, cert. ef. 7-3-12 thru 8-31-12; DFW 87-2012 (Temp), f. 7-11-12, cert. ef. 7-12-12 thru 8-31-12; Temporary Suspended by DFW 94-2012 (Temp), f. & cert. ef. 7-27-12 thru 10-31-12; DFW 57-2013 (Temp), f. 6-12-13, cert. ef. 6-16-13 thru 7-31-13; DFW 63-2013 (Temp), f. 6-27-13, cert. ef. 6-29-13 thru 7-31-13; DFW 69-2013 (Temp), f. 7-5-13, cert. ef. 7-6-13 thru 7-31-13; DFW 71-2013 (Temp), f. 7-11-13, cert. ef. 7-15-13 thru 7-31-13; DFW 77-2013 (Temp), f. 7-18-13, cert. ef. 7-22-13 thru 7-31-13; Administrative correction, 8-21-13; DFW 66-2014 (Temp), f. 6-12-14, cert. ef. 6-16-14 thru 7-31-14; DFW 79-2014 (Temp), f. 6-26-14, cert. ef. 6-30-14 thru 7-31-14; DFW 91-2014 (Temp), f. 7-10-14, cert. ef. 7-14-14 thru 7-31-14; DFW 95-2014 (Temp), f. 7-17-14, cert. ef. 7-21-14 thru 7-31-14; DFW 103-2014 (Temp), f. 7-23-14, cert. ef. 7-28-14 thru 7-31-14; Administrative correction, 8-28-14; DFW 71-2015 (Temp), f. 6-15-15, cert. ef. 6-16-15 thru 7-31-15; DFW 80-2015 (Temp), f. 6-30-15, cert. ef. 7-6-15 thru 7-31-15; DFW 83-2015 (Temp), f. 7-7-15, cert. ef. 7-8-15 thru 7-31-15; DFW 87-2015 (Temp), f. & cert. ef. 7-15-15 thru 7-31-15; DFW 90-2015 (Temp), f. 7-20-15, cert. ef. 7-21-15 thru 7-31-15; DFW 93-2015 (Temp), f. 7-27-15, cert. ef. 7-28-15 thru 7-31-15; Administrative correction, 8-18-15; DFW 70-2016 (Temp), f. 6-13-16, cert. ef. 6-16-16 thru 7-31-16; DFW 86-2016 (Temp), f. 6-30-16, cert. ef. 7-5-16 thru 8-31-16; DFW 88-2016 (Temp), f. 7-7-16, cert. ef. 7-11-16 thru 7-31-16; DFW 93-2016 (Temp), f. 7-14-16, cert. ef. 7-18-16 thru 7-31-16; Administrative correction, 8-29-16; DFW 75-2017 (Temp), f. & cert. ef. 6-15-17 thru 7-31-17

Rule Caption: Modify 2017 Summer Commercial Seasons in the Select Areas of the Columbia River.

Adm. Order No.: DFW 76-2017 (Temp)

Filed with Sec. of State: 6-15-2017

Certified to be Effective: 6-15-17 thru 9-15-17

Notice Publication Date:

Rules Amended: 635-042-0145, 635-042-0160, 635-042-0170

Subject: These amended rules modify the 2017 summer commercial salmon seasons for Select Areas fishery in the Columbia River. Fisheries are managed to provide opportunity to meet species or stock-specific allocations for each fishery while remaining within ESA guidelines. There is insufficient time to initiate the permanent rulemaking process prior to the scheduled start of the next Youngs Bay fishery or to add additional time on other Select Area fisheries.. Failure to adopt this rule would cause serious prejudice to the public interest in that commercial fishers may not be able to access their white sturgeon allocation or access returning hatchery salmon.

Rules Coordinator: Michelle Tate—(503) 947-6044

635-042-0145

Youngs Bay Salmon Season

(1) Salmon, white sturgeon, and shad may be taken for commercial purposes in those waters of Youngs Bay.

(a) The 2017 open fishing periods are as follows:

(A) Summer Season:

(i) Noon Monday through Noon Friday (4 days/week) from June 19 through June 30,

(ii) Noon Monday July 3 through Noon Thursday July 6 (3 days),

(iii) Noon Tuesday through Noon Thursday (2 days/week) from July 11 through July 27.

(2) The fishing area is defined as the waters of Youngs Bay from the Highway 101 Bridge upstream to the upper boundary markers at the confluence of the Klaskanine and Youngs rivers, and includes the lower Walluski River upstream to the Highway 202 Bridge and the lower Lewis and Clark River upstream to the overhead power lines immediately upstream of Barrett Slough.

(3) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight may not exceed two pounds per any fathom except the use of additional weights and/or anchors attached directly to the headline is allowed upstream of markers located approximately 200 yards upstream of the mouth of the Walluski River during all Youngs Bay commercial fisheries and upstream of the alternate Highway 101 Bridge in the Lewis and Clark River. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net.

(a) It is unlawful to use a gill net having a mesh size that is more than 9.75-inches during the summer season. (b) Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

ADMINISTRATIVE RULES

(4) A maximum of five white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fisheries are open. During the fishing periods identified in subsections (1)(a)(A), the weekly white sturgeon limit applies to combined possessions and sales for all open Select Area fisheries.

(5) Non-resident commercial fishing and boat licenses are not required for Washington fishers participating in Youngs Bay commercial fisheries. A valid fishing and boat license issued by the state of Washington is considered adequate for participation in this fishery. The open area for non-resident commercial fishers includes all areas open for commercial fishing.

Stat. Auth.: ORS 183.325, 506.109 & 506.611
Stats. Implemented: ORS 506.129

Hist.: FWC 32-1979, f. & cert. 8-22-79; FWC 28-1980, f. & cert. 6-23-80; FWC 42-1980(Temp), f. & cert. 8-22-80; FWC 30-1981, f. & cert. 8-14-81; FWC 42-1981(Temp), f. & cert. 11-5-81; FWC 54-1982, f. & cert. 8-17-82; FWC 37-1983, f. & cert. 8-18-83; FWC 61-1983(Temp), f. & cert. 10-19-83; FWC 42-1984, f. & cert. 8-20-84; FWC 39-1985, f. & cert. 8-15-85; FWC 37-1986, f. & cert. 8-11-86; FWC 72-1986(Temp), f. & cert. 10-31-86; FWC 64-1987, f. & cert. 8-7-87; FWC 73-1988, f. & cert. 8-19-88; FWC 55-1989(Temp), f. & cert. 8-7-89, cert. ef. 8-20-89; FWC 82-1990(Temp), f. & cert. 8-19-90; FWC 86-1991, f. & cert. 8-7-91, cert. ef. 8-18-91; FWC 123-1991(Temp), f. & cert. 10-21-91; FWC 30-1992(Temp), f. & cert. ef. 4-27-92; FWC 35-1992(Temp), f. & cert. ef. 5-22-92, cert. ef. 5-25-92; FWC 74-1992 (Temp), f. & cert. ef. 8-10-92, cert. ef. 8-16-92; FWC 28-1993(Temp), f. & cert. ef. 4-26-93; FWC 48-1993, f. & cert. ef. 8-9-93; FWC 21-1994(Temp), f. & cert. ef. 4-22-94, cert. ef. 4-25-94; FWC 51-1994, f. & cert. ef. 8-22-94; FWC 64-1994(Temp), f. & cert. ef. 9-14-94, cert. ef. 9-15-94; FWC 66-1994(Temp), f. & cert. ef. 9-20-94; FWC 27-1995, f. & cert. ef. 3-29-95, cert. ef. 4-1-95; FWC 48-1995(Temp), f. & cert. ef. 6-3-95; FWC 66-1995, f. & cert. ef. 8-22-95, cert. ef. 8-27-95; FWC 69-1995, f. & cert. ef. 8-25-95, cert. ef. 8-27-95; FWC 8-1995, f. & cert. ef. 2-28-96, cert. ef. 3-1-96; FWC 37-1996(Temp), f. & cert. ef. 6-11-96, cert. ef. 6-12-96; FWC 41-1996, f. & cert. ef. 8-12-96; FWC 45-1996(Temp), f. & cert. ef. 8-16-96, cert. ef. 8-19-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 4-1997, f. & cert. ef. 1-30-97; FWC 47-1997, f. & cert. ef. 8-15-97; FWC 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; FWC 14-1998, f. & cert. ef. 3-3-98; FWC 18-1998(Temp), f. & cert. ef. 3-9-98, cert. ef. 3-11-98 thru 3-31-98; FWC 60-1998(Temp), f. & cert. ef. 8-7-98 thru 8-21-98; FWC 67-1998, f. & cert. ef. 8-24-98; FWC 10-1999, f. & cert. ef. 2-26-99; FWC 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; FWC 55-1999, f. & cert. ef. 8-12-99; FWC 9-2000, f. & cert. ef. 2-25-00; FWC 42-2000, f. & cert. ef. 8-3-00; FWC 3-2001, f. & cert. ef. 2-6-01; FWC 66-2001(Temp), f. & cert. ef. 8-6-01 thru 8-14-01; FWC 76-2001(Temp), f. & cert. ef. 8-20-01 thru 10-31-01; FWC 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; FWC 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; FWC 82-2002(Temp), f. & cert. ef. 8-7-02 thru 9-1-02; FWC 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; FWC 12-2003, f. & cert. ef. 2-14-03; FWC 17-2003(Temp), f. & cert. ef. 2-27-03, cert. ef. 3-1-03 thru 8-1-03; FWC 32-2003(Temp), f. & cert. ef. 4-23-03 thru 8-1-03; FWC 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; FWC 36-2003(Temp), f. & cert. ef. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; FWC 37-2003(Temp), f. & cert. ef. 5-7-03 thru 10-1-03; FWC 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; FWC 89-2003(Temp), f. & cert. ef. 9-9-03 thru 12-31-03; FWC 11-2004, f. & cert. ef. 2-13-04; FWC 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; FWC 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; FWC 28-2004(Temp), f. & cert. ef. 4-12-04 thru 4-15-04; FWC 39-2004(Temp), f. & cert. ef. 5-6-04, cert. ef. 5-6-04 thru 7-31-04; FWC 44-2004(Temp), f. & cert. ef. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; FWC 79-2004(Temp), f. & cert. ef. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; FWC 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; FWC 6-2005, f. & cert. ef. 2-14-05; FWC 15-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; FWC 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; FWC 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; FWC 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; FWC 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; FWC 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; FWC 46-2005(Temp), f. & cert. ef. 5-17-05, cert. ef. 5-18-05 thru 10-16-05; FWC 73-2005(Temp), f. & cert. ef. 7-11-05 thru 7-31-05; FWC 77-2005(Temp), f. & cert. ef. 7-18-05 thru 7-31-05; FWC 85-2005(Temp), f. & cert. ef. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; FWC 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; FWC 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; FWC 116-2005(Temp), f. & cert. ef. 10-5-05 thru 12-31-05; FWC 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; FWC 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; FWC 5-2006, f. & cert. ef. 2-15-06; FWC 14-2006(Temp), f. & cert. ef. 3-16-06 thru 7-27-06; FWC 15-2006(Temp), f. & cert. ef. 3-23-06 thru 7-27-06; FWC 17-2006(Temp), f. & cert. ef. 3-29-06, cert. ef. 3-30-06 thru 7-27-06; FWC 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; FWC 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; FWC 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; FWC 52-2006(Temp), f. & cert. ef. 6-28-06 thru 7-27-06; FWC 73-2006(Temp), f. & cert. ef. 8-1-06, cert. ef. 8-2-06 thru 12-31-06; FWC 103-2006(Temp), f. & cert. ef. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; FWC 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; FWC 7-2007(Temp), f. & cert. ef. 2-1-07 thru 7-30-07; FWC 9-2007, f. & cert. ef. 2-14-07; FWC 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; FWC 16-2007(Temp), f. & cert. ef. 3-14-07 thru 9-9-07; FWC 25-2007(Temp), f. & cert. ef. 4-17-07, cert. ef. 4-18-07 thru 7-26-07; FWC 45-2007(Temp), f. & cert. ef. 6-15-07, cert. ef. 6-25-07 thru 7-31-07; FWC 50-2007(Temp), f. & cert. ef. 6-29-07, cert. ef. 7-4-07 thru 7-31-07; FWC 61-2007(Temp), f. & cert. ef. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; FWC 108-2007(Temp), f. & cert. ef. 10-14-07 thru 12-31-07; Administrative correction 1-24-08; FWC 6-2008(Temp), f. & cert. ef. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; FWC 16-2008(Temp), f. & cert. ef. 2-26-08, cert. ef. 3-2-08 thru 8-28-08; FWC 30-2008(Temp), f. & cert. ef. 3-27-08, cert. ef. 3-30-08 thru 8-28-08; FWC 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; FWC 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; FWC 85-2008(Temp), f. & cert. ef. 7-24-08, cert. ef. 8-1-08 thru 12-31-08; FWC 108-2008(Temp), f. & cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; FWC 12-2009(Temp), f. & cert. ef. 2-13-09, cert. ef. 2-15-09 thru 7-31-09; FWC 24-2009(Temp), f. & cert. ef. 3-10-09, cert. ef. 3-11-09 thru 7-31-09; FWC 49-2009(Temp), f. & cert. ef. 5-14-09, cert. ef. 5-17-09 thru 7-31-09; FWC 89-2009(Temp), f. & cert. ef. 8-3-09, cert. ef. 8-4-09 thru 12-31-09; FWC 107-2009(Temp), f. & cert. ef. 9-2-09, cert. ef. 9-5-09 thru 10-31-09; Administrative correction 11-19-09; FWC 17-2010(Temp), f. & cert. ef. 2-22-10 thru 7-31-10; FWC 20-2010(Temp), f. & cert. ef. 2-26-10 thru 7-31-10; FWC 30-2010(Temp), f. & cert. ef. 3-11-10, cert. ef. 3-14-10 thru 7-31-10; FWC 35-2010(Temp), f. & cert. ef. 3-23-10, cert. ef. 3-24-10 thru 7-31-10; FWC 40-2010(Temp), f. & cert. ef. 4-1-10 thru 7-31-10; FWC 46-2010(Temp), f. & cert. ef. 4-21-10 thru 7-31-10; FWC 53-2010(Temp), f. & cert. ef. 5-4-10 thru 7-31-10; FWC 57-2010(Temp), f. & cert. ef. 5-11-10 thru 7-31-10; FWC 69-2010(Temp), f. & cert. ef. 5-18-10 thru 7-31-10; FWC 113-2010(Temp), f. & cert. ef. 8-2-10, cert. ef. 8-4-10 thru 10-31-10; FWC 129-2010(Temp), f. & cert. ef. 9-10-10 thru 10-31-10; Administrative correction 11-23-10; FWC 12-2011(Temp), f. & cert. ef. 2-10-11, cert. ef. 2-13-11 thru 7-29-11; FWC 23-2011, f. & cert. ef. 3-21-11; FWC 32-

2011(Temp), f. & cert. ef. 4-21-11 thru 7-29-11; FWC 35-2011(Temp), f. & cert. ef. 4-28-11 thru 7-29-11; FWC 46-2011(Temp), f. & cert. ef. 5-12-11 thru 7-29-11; FWC 52-2011(Temp), f. & cert. ef. 5-18-11 thru 7-29-11; FWC 76-2011(Temp), f. & cert. ef. 6-24-11, cert. ef. 6-27-11 thru 7-29-11; FWC 106-2011(Temp), f. & cert. ef. 8-2-11, cert. ef. 8-3-11 thru 10-31-11; FWC 121-2011(Temp), f. & cert. ef. 8-29-11, cert. ef. 9-5-11 thru 10-31-11; Administrative correction, 11-18-11; FWC 12-2012(Temp), f. & cert. ef. 2-8-12, cert. ef. 2-12-12 thru 7-31-12; FWC 24-2012(Temp), f. & cert. ef. 3-15-12, cert. ef. 3-18-12 thru 7-31-12; FWC 26-2012(Temp), f. & cert. ef. 3-21-12 thru 7-31-12; FWC 27-2012(Temp), f. & cert. ef. 3-27-12, cert. ef. 3-29-12 thru 7-31-12; FWC 28-2012(Temp), f. & cert. ef. 4-1-12 thru 7-31-12; FWC 30-2012(Temp), f. & cert. ef. 4-4-12, cert. ef. 4-5-12 thru 7-31-12; FWC 36-2012(Temp), f. & cert. ef. 4-16-12, cert. ef. 4-19-12 thru 7-31-12; FWC 82-2012(Temp), f. & cert. ef. 6-29-12, cert. ef. 7-2-12 thru 7-31-12; FWC 96-2012(Temp), f. & cert. ef. 7-30-12, cert. ef. 8-1-12 thru 10-31-12; Administrative correction 11-23-12; FWC 11-2013(Temp), f. & cert. ef. 2-8-13, cert. ef. 2-11-13 thru 7-31-13; FWC 22-2013(Temp), f. & cert. ef. 3-13-13 thru 7-31-13; FWC 34-2013(Temp), f. & cert. ef. 5-14-13, cert. ef. 5-15-13 thru 7-31-13; FWC 36-2013(Temp), f. & cert. ef. 5-22-13 thru 7-31-13; FWC 44-2013(Temp), f. & cert. ef. 5-29-13 thru 7-31-13; FWC 82-2013(Temp), f. & cert. ef. 7-29-13, cert. ef. 7-31-13 thru 10-31-13; FWC 87-2013(Temp), f. & cert. ef. 8-9-13 thru 10-31-13; FWC 109-2013(Temp), f. & cert. ef. 9-27-13, cert. ef. 9-30-13 thru 10-31-13; Administrative correction, 11-22-13; FWC 8-2014(Temp), f. & cert. ef. 2-10-14 thru 7-31-14; FWC 18-2014(Temp), f. & cert. ef. 3-7-14, cert. ef. 3-10-14 thru 7-30-14; FWC 25-2014(Temp), f. & cert. ef. 3-13-14, cert. ef. 3-17-14 thru 7-31-14; FWC 32-2014(Temp), f. & cert. ef. 4-21-14, cert. ef. 4-22-14 thru 7-31-14; FWC 35-2014(Temp), f. & cert. ef. 4-24-14 thru 7-31-14; FWC 39-2014(Temp), f. & cert. ef. 5-7-14, cert. ef. 5-8-14 thru 7-31-14; FWC 45-2014(Temp), f. & cert. ef. 5-14-14, cert. ef. 5-20-14 thru 7-31-14; FWC 51-2014(Temp), f. & cert. ef. 5-28-14 thru 7-31-14; FWC 55-2014(Temp), f. & cert. ef. 6-3-14, cert. ef. 6-4-14 thru 7-31-14; FWC 104-2014(Temp), f. & cert. ef. 8-4-14, cert. ef. 8-5-14 thru 10-31-14; Administrative correction 11-24-14; FWC 10-2015(Temp), f. & cert. ef. 2-3-15, cert. ef. 2-9-15 thru 7-30-15; FWC 17-2015(Temp), f. & cert. ef. 3-5-15, cert. ef. 3-9-15 thru 7-30-15; FWC 21-2015(Temp), f. & cert. ef. 3-24-15 thru 7-30-15; FWC 29-2015(Temp), f. & cert. ef. 4-21-15 thru 7-30-15; FWC 37-2015(Temp), f. & cert. ef. 5-1-15, cert. ef. 5-4-15 thru 7-30-15; FWC 42-2015(Temp), f. & cert. ef. 5-12-15 thru 7-31-15; FWC 50-2015(Temp), f. & cert. ef. 5-27-15 thru 7-31-15; FWC 58-2015(Temp), f. & cert. ef. 6-2-15 thru 7-31-15; FWC 63-2015(Temp), f. & cert. ef. 6-9-15, cert. ef. 6-10-15 thru 7-31-15; FWC 98-2015(Temp), f. & cert. ef. 7-30-15, cert. ef. 8-4-15 thru 10-31-15; FWC 110-2015(Temp), f. & cert. ef. 8-18-15, cert. ef. 8-24-15 thru 10-31-15; FWC 117-2015(Temp), f. & cert. ef. 8-28-15, cert. ef. 8-31-15 thru 10-31-15; Administrative correction, 11-20-15; FWC 8-2016(Temp), f. & cert. ef. 2-1-16, cert. ef. 2-8-16 thru 7-31-16; FWC 20-2016(Temp), f. & cert. ef. 3-25-16, cert. ef. 3-28-16 thru 7-31-16; FWC 26-2016(Temp), f. & cert. ef. 4-5-16, cert. ef. 4-6-16 thru 7-31-16; FWC 31-2016(Temp), f. & cert. ef. 4-11-16, cert. ef. 4-13-16 thru 7-31-16; FWC 32-2016(Temp), f. & cert. ef. 4-20-16, cert. ef. 4-21-16 thru 7-31-16; FWC 47-2016(Temp), f. & cert. ef. 5-11-16 thru 7-31-16; FWC 53-2016(Temp), f. & cert. ef. 5-19-16, cert. ef. 5-23-16 thru 7-31-16; FWC 60-2016(Temp), f. & cert. ef. 5-26-16, cert. ef. 5-31-16 thru 7-31-16; FWC 64-2016(Temp), f. & cert. ef. 6-2-16, cert. ef. 6-7-16 thru 7-31-16; FWC 99-2016(Temp), f. & cert. ef. 7-29-16, cert. ef. 8-1-16 thru 10-31-16; FWC 9-2017(Temp), f. & cert. ef. 2-6-17 thru 3-28-17; FWC 32-2017(Temp), f. & cert. ef. 3-29-17, cert. ef. 3-30-17 thru 9-15-17; FWC 39-2017(Temp), f. & cert. ef. 4-5-17, cert. ef. 4-6-17 thru 9-15-17; FWC 40-2017(Temp), f. & cert. ef. 4-12-17, cert. ef. 4-13-17 thru 9-15-17; FWC 53-2017(Temp), f. & cert. ef. 4-27-17 thru 9-15-17; FWC 54-2017(Temp), f. & cert. ef. 5-2-17, cert. ef. 5-3-17; FWC 57-2017(Temp), f. & cert. ef. 5-11-17, cert. ef. 5-15-17 thru 9-15-17; FWC 61-2017(Temp), f. & cert. ef. 5-18-17, cert. ef. 5-22-17 thru 9-15-17; FWC 64-2017(Temp), f. & cert. ef. 5-26-17, cert. ef. 5-29-17 thru 9-29-17; FWC 65-2017(Temp), f. & cert. ef. 6-1-17 thru 9-30-17; FWC 76-2017(Temp), f. & cert. ef. 6-15-17 thru 9-15-17

635-042-0160

Blind Slough and Knappa Slough Select Area Salmon Season

(1) Salmon, white sturgeon, and shad may be taken for commercial purposes during open fishing periods described as the summer fishery in subsections (1)(a)(A) of this rule in those waters of Blind Slough and Knappa Slough. The following restrictions apply:

(a) The open fishing periods are established in segments categorized as the summer season fishery in Blind Slough and Knappa Slough in subsection (1)(a)(A). The seasons are open nightly from 7:00 p.m. to 7:00 a.m. the following morning (12 hours), as follows:

(A) Blind Slough and Knappa Sloughs:

(i) Monday and Thursday nights beginning Monday, June 19 through Thursday, June 29 (4 nights) Sunday night July 2, Thursday night July 6, and Monday night July 10, 2017 (3 nights).

(b) The fishing areas for the season are:

(i) The lower boundry of the Knappa Slough fishing area is defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore (fall boundry).

(c) Gear restrictions are as follows:

(A) During the summer fishery, outlined above in subsection (1)(a)(A), gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. It is unlawful to use a gill net having a mesh size that is more than 9.75-inches.

(B) Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(2) A maximum of five white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods identified in subsections (1)(a)(A) the weekly aggregate sturgeon limit applies to combined possessions and sales for all open Select Area fisheries.

(3) Oregon licenses are required in the open waters upstream from the railroad bridge.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 183.325, 506.109, 506.119 & 507.030
Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; FWC 15-1998, f. & cert. ef. 3-3-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 65-2000(Temp), f. 9-22-00, cert. ef. 9-25-00 thru 12-31-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 86-2001, f. & cert. ef. 9-4-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 14-2002(Temp), f. 2-13-02, cert. ef. 2-18-02 thru 8-17-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04, cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 16-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 14-2006(Temp), f. 3-15-06, cert. ef. 3-16-06 thru 7-27-06; DFW 16-2006(Temp), f. 3-23-06 & cert. ef. 3-26-06 thru 7-27-06; DFW 18-2006(Temp), f. 3-29-06, cert. ef. 4-2-06 thru 7-27-06; DFW 20-2006(Temp), f. 4-7-06, cert. ef. 4-9-06 thru 7-27-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 75-2006(Temp), f. 8-8-06, cert. ef. 9-5-06 thru 12-31-06; DFW 92-2006(Temp), f. 9-1-06, cert. ef. 9-5-06 thru 12-31-06; DFW 98-2006(Temp), f. & cert. ef. 9-12-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 25-2007(Temp), f. 4-17-07; DFW 4-18-07 thru 7-26-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative correction 1-24-08; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 16-2008(Temp), f. 2-26-08, cert. ef. 3-2-08 thru 8-28-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; DFW 85-2008(Temp), f. 7-24-08, cert. ef. 8-1-08 thru 12-31-08; DFW 103(Temp), f. 8-26-08, cert. ef. 9-2-08 thru 10-31-08; DFW 108-2008(Temp), f. 9-8-08, cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; DFW 12-2009(Temp), f. 2-13-09, cert. ef. 2-15-09 thru 7-31-09; DFW 49-2009(Temp), f. 5-14-09, cert. ef. 5-17-09 thru 7-31-09; DFW 89-2009(Temp), f. 8-3-09, cert. ef. 8-4-09 thru 12-31-09; DFW 107-2009(Temp), f. 9-2-09, cert. ef. 9-5-09 thru 10-31-09; Administrative correction 11-19-09; DFW 15-2010(Temp), f. 2-19-10, cert. ef. 2-21-10 thru 6-11-10; DFW 46-2010(Temp), f. & cert. ef. 4-21-10 thru 7-31-10; DFW 53-2010(Temp), f. & cert. ef. 5-4-10 thru 7-31-10; DFW 57-2010(Temp), f. & cert. ef. 5-11-10 thru 7-31-10; DFW 69-2010(Temp), f. & cert. ef. 5-18-10 thru 7-31-10; DFW 113-2010(Temp), f. 8-2-10, cert. ef. 8-4-10 thru 10-31-10; DFW 129-2010(Temp), f. & cert. ef. 9-10-10 thru 10-31-10; Administrative correction 11-23-10; DFW 12-2011(Temp), f. 2-10-11, cert. ef. 2-13-11 thru 7-29-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 32-2011(Temp), f. 4-20-11, cert. ef. 4-21-11 thru 7-29-11; DFW 44-2011(Temp), f. & cert. ef. 5-11-11 thru 7-29-11; Administrative correction 6-28-11; DFW 113-2011(Temp), f. 8-10-11, cert. ef. 8-15-11 thru 10-31-11; Administrative correction 11-18-11; DFW 12-2012(Temp), f. 2-8-12, cert. ef. 2-12-12 thru 7-31-12; DFW 104-2012(Temp), f. 8-6-12, cert. ef. 8-13-12 thru 10-31-12; Administrative correction 11-23-12; DFW 11-2013(Temp), f. 2-8-13, cert. ef. 2-11-13 thru 7-31-13; DFW 24-2013(Temp), f. & cert. ef. 3-21-13 thru 7-31-13; Administrative correction 8-21-13; DFW 91-2013(Temp), f. 8-22-13, cert. ef. 8-26-13 thru 10-31-13; DFW 110-2013(Temp), f. 9-27-13, cert. ef. 9-30-13 thru 10-31-13; Administrative correction 11-22-13; DFW 8-2014(Temp), f. & cert. ef. 2-10-14 thru 7-31-14; DFW 35-2014(Temp), f. & cert. ef. 4-24-14 thru 7-31-14; DFW 39-2014(Temp), f. 5-7-14, cert. ef. 5-8-14 thru 7-31-14; DFW 115-2014(Temp), f. 8-5-14, cert. ef. 8-18-14 thru 10-31-14; DFW 135-2014(Temp), f. & cert. ef. 9-19-14 thru 10-31-14; Administrative correction 11-24-14; DFW 10-2015(Temp), f. 2-3-15, cert. ef. 2-9-15 thru 7-30-15; DFW 29-2015(Temp), f. & cert. ef. 4-21-15 thru 7-30-15; DFW 37-2015(Temp), f. 5-1-15, cert. ef. 5-4-15 thru 7-30-15; DFW 70-2015(Temp), f. 6-15-15, cert. ef. 6-16-15 thru 7-31-15; DFW 76-2015(Temp), f. 6-23-15, cert. ef. 6-25-15 thru 7-31-15; DFW 102-2015(Temp), f. 8-10-15, cert. ef. 8-17-15 thru 10-31-15; Administrative correction 11-20-15; DFW 8-2016(Temp), f. 2-1-16, cert. ef. 2-8-16 thru 7-31-16; DFW 23-2016(Temp), f. & cert. ef. 3-28-16 thru 7-31-16; DFW 32-2016(Temp), f. 4-20-16, cert. ef. 4-21-16 thru 7-31-16; DFW 71-2016(Temp), f. 6-13-16, cert. ef. 6-16-16 thru 7-31-16; DFW 78-2016(Temp), f. 6-23-16 thru 7-31-16; DFW 85-2016(Temp), f. & cert. ef. 6-30-16 thru 7-31-16; DFW 87-2016(Temp), f. & cert. ef. 7-7-16 thru 7-31-16; DFW 92-2016(Temp), f. 7-13-16, cert. ef. 7-14-16 thru 7-31-16; DFW 101-2016(Temp), f. 8-2-16, cert. ef. 8-24-16 thru 10-31-16; DFW 129-2016(Temp), f. 9-29-16, cert. ef. 10-1-16 thru 13-31-16; DFW 9-2017(Temp), f. & cert. ef. 2-6-17 thru 3-28-17; DFW 25-2017(Temp), f. & cert. ef. 3-20-17 thru 6-13-17; DFW 32-2017(Temp), f. 3-29-17, cert. ef. 3-30-17 thru 9-15-17; DFW 39-2017(Temp), f. 4-5-17, cert. ef. 4-6-17 thru 9-15-17; DFW 40-2017(Temp), f. 4-12-17, cert. ef. 4-13-17 thru 9-15-17; DFW 61-2017(Temp), f. 5-18-17, cert. ef. 5-22-17 thru 9-15-17; DFW 76-2017(Temp), f. & cert. ef. 6-15-17 thru 9-15-17

635-042-0170

Tongue Point Basin and South Channel

(1) The Tongue Point fishing area includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility through navigation marker #6 to Mott Island, a line from a marker at the southeast end of Mott Island northeasterly to a marker on the northwest tip of Lois Island, and a line from a marker on the southwest end of Lois Island westerly to a marker on the Oregon shore.

(2) The South Channel fishing area includes all waters bounded by a line from a marker on John Day Point to a marker on the southwest end of Lois Island upstream to an upper boundary line from a marker on Settler Point northwesterly to a marker on the eastern tip of Burnside Island defining the upstream terminus of South Channel.

(3) Salmon, shad and white sturgeon may be taken for commercial purposes in those waters of Tongue Point and South Channel as described in section (1) and section (2) of this rule. Open fishing periods are:

(A) Summer season

(i) Monday and Thursday nights from Monday June 19 through Thursday June 29, Sunday night July 2, Thursday night July 6, and Monday night July 10, 2017 from 7:00 p.m. to 7:00 a.m. (12 hours) the following morning.

(4) Gear restrictions are as follows:

(a) In waters described in section (1) as Tongue Point basin, gill nets may not exceed 250 fathoms in length and weight limit on the lead line is not to exceed two pounds on any one fathom. It is unlawful to use a gill net having a mesh size that is more than 9.75-inches. While fishing during the seasons described in this rule, gillnets with lead line in excess of two pounds per fathom may be stored on boats.

(b) In waters described in section (2) as South Channel, nets are restricted to 250 fathoms in length with no weight restrictions on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. It is unlawful to use a gill net having a mesh size that is more than 9.75-inches.

(c) Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(5) A maximum of five white sturgeon with a fork length of 44-50 inches may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. During the fishing periods identified in section (3)(A)(i) above, the weekly white sturgeon limit applies to combined possessions and sales for all open Select Area fisheries.

Stat. Auth.: ORS 183.325, 506.109 & 506.119
Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; FWC 61-1997(Temp), f. 9-23-97, cert. ef. 9-24-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 41-1998(Temp), f. 5-28-98, cert. ef. 5-29-98; DFW 42-1998(Temp), f. 5-29-98, cert. ef. 5-31-98 thru 6-6-98; DFW 45-1998(Temp), f. 6-5-98, cert. ef. 6-6-98 thru 6-10-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998, f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; Administrative correction 7-30-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; Administrative correction 1-20-06; DFW 76-2006(Temp), f. & cert. ef. 8-8-06, cert. ef. 9-5-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative Correction 1-24-08; DFW 44-2008(Temp), f. 4-25-08, cert. ef. 4-28-08 thru 10-24-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; DFW 85-2008(Temp), f. 7-24-08, cert. ef. 8-1-08 thru 12-31-08; DFW 108-2008(Temp), f. 9-8-08, cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; DFW 12-2009(Temp), f. 2-13-09, cert. ef. 2-15-09 thru 7-31-09; DFW 89-2009(Temp), f. 8-3-09, cert. ef. 8-4-09 thru 12-31-09; DFW 107-2009(Temp), f. 9-2-09, cert. ef. 9-5-09 thru 10-31-09; Administrative correction 11-19-09; DFW 29-2010(Temp), f. 3-9-10, cert. ef. 4-19-10 thru 6-12-10; DFW 46-2010(Temp), f. & cert. ef. 4-21-10 thru 7-31-10; DFW 53-2010(Temp), f. & cert. ef. 5-4-10 thru 7-31-10; DFW 57-2010(Temp), f. & cert. ef. 5-11-10 thru 7-31-10; DFW 69-2010(Temp), f. & cert. ef. 5-18-10 thru 7-31-10; DFW 113-2010(Temp), f. 8-2-10, cert. ef. 8-4-10 thru 10-31-10; DFW 129-2010(Temp), f. & cert. ef. 9-10-10 thru 10-31-10; Administrative correction 11-23-10; DFW 12-2011(Temp), f. 2-10-11, cert. ef. 2-13-11 thru 7-29-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 32-2011(Temp), f. 4-20-11, cert. ef. 4-21-11 thru 7-29-11; DFW 44-2011(Temp), f. & cert. ef. 5-11-11 thru 6-10-11; Administrative correction 6-28-11; DFW 113-2011(Temp), f. 8-10-11, cert. ef. 8-15-11 thru 10-31-11; DFW 122-2011(Temp), f. 8-29-11, cert. ef. 9-19-11 thru 10-31-11; Administrative correction 11-18-11; DFW 41-2012(Temp), f. 4-24-12, cert. ef. 4-26-12 thru 6-30-12; Administrative correction 8-1-12; DFW 104-2012(Temp), f. 8-6-12, cert. ef. 8-13-12 thru 10-31-12; Administrative correction 11-23-12; DFW 11-2013(Temp), f. 2-8-13, cert. ef. 2-11-13 thru 7-31-13; DFW 34-2013(Temp), f. 5-14-13, cert. ef. 5-15-13 thru 7-31-13; Administrative correction 8-21-13; DFW 91-2013(Temp), f. 8-22-13, cert. ef. 8-26-13 thru 10-31-13; DFW 110-2013(Temp), f. 9-27-13, cert. ef. 9-30-13 thru 10-31-13; Administrative correction 11-22-13; DFW 8-2014(Temp), f. & cert. ef. 2-10-14 thru 7-31-14; DFW 35-2014(Temp), f. & cert. ef. 4-24-14 thru 7-31-14; DFW 39-2014(Temp), f. 5-7-14, cert. ef. 5-8-14 thru 7-31-14;

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DFW 115-2014(Temp), f. 8-5-14, cert. ef. 8-18-14 thru 10-31-14; DFW 135-2014(Temp), f. & cert. ef. 9-19-14 thru 10-31-14; Administrative correction 11-24-14; DFW 10-2015(Temp), f. 2-3-15, cert. ef. 2-9-15 thru 7-30-15; DFW 29-2015(Temp), f. & cert. ef. 4-21-15 thru 7-30-15; DFW 37-2015(Temp), f. 5-1-15, cert. ef. 5-4-15 thru 7-30-15; DFW 102-2015(Temp), f. 8-10-15, cert. ef. 8-17-15 thru 10-31-15; Administrative correction, 11-20-15; DFW 8-2016(Temp), f. 2-1-16, cert. ef. 2-8-16 thru 7-31-16; DFW 32-2016(Temp), f. 4-20-16, cert. ef. 4-21-16 thru 7-31-16; DFW 71-2016(Temp), f. 6-13-16, cert. ef. 6-16-16 thru 7-31-16; DFW 78-2016(Temp), f. 6-23-16 thru 7-31-16; DFW 85-2016(Temp), f. & cert. ef. 6-30-16 thru 7-31-16; DFW 87-2016(Temp), f. & cert. ef. 7-7-16 thru 7-31-16; DFW 92-2016(Temp), f. 7-13-16, cert. ef. 7-14-16 thru 7-31-16; DFW 101-2016(Temp), f. 8-2-16, cert. ef. 8-24-16 thru 10-31-16; DFW 9-2017(Temp), f. & cert. ef. 2-6-17 thru 3-28-17; DFW 25-2017(Temp), f. & cert. ef. 3-20-17 thru 6-13-17; DFW 32-2017(Temp), f. 3-29-17, cert. ef. 3-30-17 thru 9-15-17; DFW 61-2017(Temp), f. 5-18-17, cert. ef. 5-22-17 thru 9-15-17; DFW 76-2017(Temp), f. & cert. ef. 6-15-17 thru 9-15-17

Department of Forestry Chapter 629

Rule Caption: Expanding water protection rules to include small and medium salmon, steelhead and bull trout streams.

Adm. Order No.: DOF 1-2017

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Rules Adopted: 629-642-0105, 629-642-0110

Rules Amended: 629-600-0100, 629-605-0170, 629-605-0173, 629-605-0500, 629-611-0000, 629-615-0300, 629-620-0300, 629-620-0400, 629-620-0800, 629-623-0300, 629-625-0100, 629-625-0430, 629-625-0700, 629-630-0600, 629-630-0700, 629-630-0800, 629-635-0100, 629-635-0110, 629-635-0200, 629-635-0210, 629-635-0310, 629-680-0020

Rules Ren. & Amend: 629-640-0000 to 629-642-0000, 629-640-0100 to 629-642-0100, 629-640-0105 to 629-642-0200, 629-640-0110 to 629-642-0300, 629-640-0200 to 629-642-0400, 629-640-0210 to 629-642-0500, 629-640-0300 to 629-642-0600, 629-640-0400 to 629-642-0700, 629-640-0500 to 629-642-0800

Subject: The Oregon Department of Forestry (ODF) has revised and added proposed rule language for additional resource protection requirements on small and medium sized Salmon, Steelhead, and/or Bull Trout (SSBT) streams located in western Oregon. The new requirements also extend up within the immediate harvest unit above the end of mapped SSBT streams, along the main stem of fish-bearing streams.

The amendment of OAR 629-600-0100 includes definitions for Salmon, Steelhead, and Bull Trout and definitions to classify Type SSBT streams.

The amendment of OAR 629-635-0200 describes how to designate Type SSBT streams and SSBT use. The proposed rules also provide information on when the rules become effective and updates to beneficial use designations. OAR 629-640 has been removed and renumbered to 629-642 with the inclusion of additional SSBT stream rules.

The adoption of OAR 629-642-0105 requires additional riparian overstory protection on SSBT streams. The proposed rule requires remaining trees in the riparian management area be well distributed and describes alternative prescriptions.

The adoption OAR 629-642-0110 allows relief to be provided to landowners who meet applicable criteria.

Rules Coordinator: Sabrina Perez—(503) 945-7210

629-600-0100

Definitions

As used in OAR chapter 629, divisions 605 through 669 and divisions 680 through 699, unless otherwise required by context:

(1) “Abandoned resource site” means a resource site that the State Forester determines is not active.

(2) “Active resource site” means a resource site that the State Forester determines has been used in the recent past by a listed species. ‘Recent past’ shall be identified for each species in administrative rule. Resource sites that are lost or rendered not viable by natural causes are not considered active.

(3) “Active roads” are roads currently being used or maintained for the purpose of removing commercial forest products.

(4) “Aquatic area” means the wetted area of streams, lakes and wetlands up to the high water level. Oxbows and side channels are included if they are part of the flow channel or contain fresh water ponds.

(5) “Artificial reforestation” means restocking a site by planting trees or through the manual or mechanical distribution of seeds.

(6) “Basal area” means the area of the cross-section of a tree stem derived from DBH.

(7) “Basal area credit” means the credit given towards meeting the live tree requirements within riparian management areas for placing material such as logs, rocks or rootwads in a stream, or conducting other enhancement activities such as side channel creation or grazing enclosures.

(8) “Bog” means a wetland that is characterized by the formation of peat soils and that supports specialized plant communities. A bog is a hydrologically closed system without flowing water. It is usually saturated, relatively acidic, and dominated by ground mosses, especially sphagnum. A bog may be forested or non-forested and is distinguished from a swamp and a marsh by the dominance of mosses and the presence of extensive peat deposits.

(9) “Bull Trout” means fish species *Salvelinus confluentus*.

(10) “Channel” is a distinct bed or banks scoured by water which serves to confine water and that periodically or continually contains flowing water.

(11) “Chemicals” means and includes all classes of pesticides, such as herbicides, insecticides, rodenticides, fungicides, plant defoliant, plant desiccants, and plant regulators, as defined in ORS 634.006(8); fertilizers, as defined in 633.311; petroleum products used as carriers; and chemical application adjuvants, such as surfactants, drift control additives, anti-foam agents, wetting agents, and spreading agents.

(12) “Commercial” means of or pertaining to the exchange or buying and selling of commodities or services. This includes any activity undertaken with the intent of generating income or profit; any activity in which a landowner, operator or timber owner receives payment from a purchaser of forest products; any activity in which an operator or timber owner receives payment or barter from a landowner for services that require notification under OAR 629-605-0140; or any activity in which the landowner, operator, or timber owner barter or exchanges forest products for goods or services. This does not include firewood cutting or timber milling for personal use.

(13) “Completion of the operation” means harvest activities have been completed to the extent that the operation area will not be further disturbed by those activities.

(14) “Conflict” means resource site abandonment or reduced resource site productivity that the State Forester determines is a result of forest practices.

(15) “Debris torrent-prone streams” are designated by the State Forester to include channels and confining slopes that drain watersheds containing high landslide hazard locations that are of sufficient confinement and channel gradient to allow shallow, rapid landslide movement.

(16) “Department” means the Oregon Department of Forestry.

(17) “Diameter breast height” (DBH) means the diameter of a tree inclusive of the bark measured four and one-half feet above the ground on the uphill side of the tree.

(18) “Domestic water use” means the use of water for human consumption and other household human use.

(19) “Dying or recently dead tree” means a tree with less than ten percent live crown or a standing tree which is dead, but has a sound root system and has not lost its small limbs. Needles or leaves may still be attached to the tree.

(20) “Estuary” means a body of water semi-enclosed by land and connected with the open ocean within which saltwater is usually diluted by freshwater derived from the land. “Estuary” includes all estuarine waters, tidelands, tidal marshes, and submerged lands extending upstream to the head of tidewater. However, the Columbia River Estuary extends to the western edge of Puget Island.

(21) “Exposure categories” are used to designate the likelihood of persons being present in structures or on public roads during periods when shallow, rapidly moving landslides may occur.

(22) “Filling” means the deposit by artificial means of any materials, organic or inorganic.

(23) “Fish use” means inhabited at any time of the year by anadromous or game fish species or fish that are listed as threatened or endangered species under the federal or state endangered species acts.

(24) “Fledging tree” means a tree or trees close to the nest which the State Forester determines are regularly used by young birds to develop flying skills.

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(25) "Foraging area" means an area (usually a body of water) where bald eagles concentrate their hunting activities.

(26) "Foraging perch" means a tree or other structure that overlooks a portion of a foraging area and is habitually used by bald eagles as a vantage point while hunting.

(27) "Forestland" means land which is used for the growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied.

(28) "Forest practice" means any operation conducted on or pertaining to forestland, including but not limited to:

- (a) Reforestation of forestland;
- (b) Road construction and maintenance;
- (c) Harvesting of forest tree species;
- (d) Application of chemicals;
- (e) Disposal of slash; and
- (f) Removal of woody biomass.

(29) "Forest tree species" means any tree species capable of producing logs, fiber or other wood materials suitable for the production of lumber, sheeting, pulp, firewood or other commercial forest products except trees grown to be Christmas trees as defined in ORS 571.505 on land used solely for the production of Christmas trees.

(30) "Free to grow" means the State Forester's determination that a tree or a stand of well distributed trees, of acceptable species and good form, has a high probability of remaining or becoming vigorous, healthy, and dominant over undesired competing vegetation. For the purpose of this definition, trees are considered well distributed if 80 percent or more of the portion of the operation area subject to the reforestation requirements of the rules contains at least the minimum per acre tree stocking required by the rules for the site and not more than ten percent contains less than one-half of the minimum per acre tree stocking required by the rules for the site.

(31) "Further review area" means an area of land that may be subject to rapidly moving landslides as mapped by the State Department of Geology and Mineral Industries or as otherwise determined by the State Forester.

(32) "Geographic region" means large areas where similar combinations of climate, geomorphology, and potential natural vegetation occur, established for the purposes of implementing the water protection rules.

(33) "Harvest type 1" means an operation that requires reforestation but does not require wildlife leave trees. A harvest type 1 is an operation that leaves a combined stocking level of free to grow seedlings, saplings, poles and larger trees that is less than the stocking level established by rule of the board that represents adequate utilization of the productivity of the site.

(34) "Harvest type 2" means an operation that requires wildlife leave trees but does not require reforestation. A harvest type 2 does not require reforestation because it has an adequate combined stocking of free to grow seedlings, saplings, poles and larger trees, but leaves:

- (a) On Cubic Foot Site Class I, II or III, fewer than 50 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre;
- (b) On Cubic Foot Site Class IV or V, fewer than 30 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre; or
- (c) On Cubic Foot Site Class VI, fewer than 15 11-inch DBH trees or less than an equivalent basal area in larger trees, per acre.

(35) "Harvest type 3" means an operation that requires reforestation and requires wildlife leave trees. This represents a level of stocking below which the size of operations is limited under ORS 527.740 and 527.750.

(36) "High landslide hazard location" means a specific site that is subject to initiation of a shallow, rapidly moving landslide. The following criteria shall be used to identify high landslide hazard locations:

- (a) The presence, as measured on site, of any slope in western Oregon (excluding competent rock outcrops) steeper than 80 percent, except in the Tyee Core Area, where it is any slope steeper than 75 percent; or
- (b) The presence, as measured on site, of any headwall or draw in western Oregon steeper than 70 percent, except in the Tyee Core Area, where it is any headwall or draw steeper than 65 percent.
- (c) Notwithstanding the slopes specified in (a) or (b) above, field identification of atypical conditions by a geotechnical specialist may be used to develop site specific slope steepness thresholds for any part of the state where the hazard is equivalent to (a) or (b) above. The final determination of equivalent hazard shall be made by the State Forester.

(37) "High water level" means the stage reached during the average annual high flow. The "high water level" often corresponds with the edge of streamside terraces, a change in vegetation, or a change in soil or litter characteristics.

(38) "Hydrologic function" means soil, stream, wetland and riparian area properties related to the storage, timing, distribution, and circulation of water.

(39) "Important springs" are springs in arid parts of eastern Oregon that have established wetland vegetation, flow year round in most years, are used by a concentration of diverse animal species, and by reason of sparse occurrence have a major influence on the distribution and abundance of upland species.

(40) "Inactive roads" are roads used for forest management purposes exclusive of removing commercial forest products.

(41) "Key components" means the attributes which are essential to maintain the use and productivity of a resource site over time. The key components vary by species and resource site. Examples include fledging trees or perching trees.

(42) "Lake" means a body of year-round standing open water.

(a) For the purposes of the forest practice rules, lakes include:

(A) The water itself, including any vegetation, aquatic life, or habitats therein; and

(B) Beds, banks or wetlands below the high water level which may contain water, whether or not water is actually present.

(b) "Lakes" do not include water developments as defined in section (95) of this rule.

(43) "Landslide mitigation" means actions taken to reduce potential landslide velocity or re-direct shallow, rapidly moving landslides near structures and roads so risk to persons is reduced.

(44) "Landowner" means any individual, combination of individuals, partnership, corporation or association of whatever nature that holds an ownership interest in forestland, including the state and any political subdivision thereof.

(45) "Large lake" means a lake greater than eight acres in size.

(46) "Large wood key piece" means a portion of a bole of a tree, with or without the rootwad attached, that is wholly or partially within the stream, that meets the length and diameter standards appropriate to stream size and high water volumes established in the "Guide to Placement of Wood, Boulders and Gravel for Habitat Restoration," developed by the Oregon Department of Forestry, Oregon Department of Fish and Wildlife, Oregon Department of State Lands, and Oregon Watershed Enhancement Board, January 2010.

(47) "Live tree" means a tree that has 10 percent or greater live crown.

(48) "Local population" means the number of birds that live within a geographical area that is identified by the State Forester. For example: the area may be defined by physical boundaries, such as a drainage or subbasin.

(49) "Main channel" means a channel that has flowing water when average flows occur.

(50) "Natural barrier to fish use" is a natural feature such as a waterfall, increase in stream gradient, channel constriction, or other natural channel blockage that prevents upstream fish passage.

(51) "Natural reforestation" means restocking a site with self-grown trees resulting from self-seeding or vegetative means.

(52) "Nest tree" means the tree, snag, or other structure that contains a bird nest.

(53) "Nesting territory" means an area identified by the State Forester that contains, or historically contained, one or more nests of a mated pair of birds.

(54) "Operation" means any commercial activity relating to the establishment, management or harvest of forest tree species except as provided by the following:

(a) The establishment, management or harvest of Christmas trees, as defined in ORS 571.505, on land used solely for the production of Christmas trees.

(b) The establishment, management or harvest of hardwood timber, including but not limited to hybrid cottonwood that is:

(A) Grown on land that has been prepared by intensive cultivation methods and that is cleared of competing vegetation for at least three years after tree planting;

(B) Of a species marketable as fiber for inclusion in the furnish for manufacturing paper products;

(C) Harvested on a rotation cycle that is 12 or fewer years after planting; and

(D) Subject to intensive agricultural practices such as fertilization, cultivation, irrigation, insect control and disease control.

(c) The establishment, management or harvest of trees actively farmed or cultured for the production of agricultural tree crops, including nuts, fruits, seeds and nursery stock.

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(d) The establishment, management or harvest of ornamental, street or park trees within an urbanized area, as that term is defined in ORS 221.010.

(e) The management or harvest of juniper species conducted in a unit of less than 120 contiguous acres within a single ownership.

(f) The establishment or management of trees intended to mitigate the effects of agricultural practices on the environment or fish and wildlife resources, such as trees that are established or managed for windbreaks, riparian filters or shade strips immediately adjacent to actively farmed lands.

(g) The development of an approved land use change after timber harvest activities have been completed and land use conversion activities have commenced.

(55) "Operator" means any person, including a landowner or timber owner, who conducts an operation.

(56) "Other wetland" means a wetland that is not a significant wetland or stream-associated wetland.

(57) "Perch tree" means a tree identified by the State Forester which is used by a bird for resting, marking its territory, or as an approach to its nest.

(58) "Plan for an Alternate Practice" means a document prepared by the landowner, operator or timber owner, submitted to the State Forester for written approval describing practices different than those prescribed in statute or administrative rule.

(59) "Relief culvert" means a structure to relieve surface runoff from roadside ditches to prevent excessive buildup in volume and velocity.

(60) "Removal" means the taking or movement of any amount of rock, gravel, sand, silt, or other inorganic substances.

(61) "Replacement tree" means a tree or snag within the nesting territory of a bird that is identified by the State Forester as being suitable to replace the nest tree or perch tree when these trees become unusable.

(62) "Resource site" is defined for the purposes of protection and for the purposes of requesting a hearing.

(a) For the purposes of protection:

(A) For threatened and endangered bird species, "resource site" is the nest tree, roost trees, or foraging perch and all identified key components.

(B) For sensitive bird nesting, roosting and watering sites, "resource site" is the nest tree, roost tree or mineral watering place, and all identified key components.

(C) For significant wetlands "resource site" is the wetland and the riparian management area as identified by the State Forester.

(b) For the purposes of requesting a hearing under ORS 527.670(4) and 527.700(3), "resource site" is defined in OAR 629-680-0020.

(63) "Riparian area" means the ground along a water of the state where the vegetation and microclimate are influenced by year-round or seasonal water, associated high water tables, and soils which exhibit some wetness characteristics.

(64) "Riparian management area" means an area along each side of specified waters of the state within which vegetation retention and special management practices are required for the protection of water quality, hydrologic functions, and fish and wildlife habitat.

(65) "Roosting site" means a site where birds communally rest at night and which is unique for that purpose.

(66) "Roost tree" is a tree within a roosting site that is used for night time roosting.

(67) "Salmon" means any of the five salmon species that exist in Oregon. These species are:

(a) Chinook salmon (*Oncorhynchus tshawytscha*);

(b) Coho salmon (*Oncorhynchus kisutch*);

(c) Chum salmon (*Oncorhynchus keta*);

(d) Sockeye salmon (*Oncorhynchus nerka*); and

(e) Pink salmon (*Oncorhynchus gorbuscha*).

(68) "Saplings and poles" means live trees of acceptable species, of good form and vigor, with a DBH of one to 10 inches.

(69) "Seedlings" means live trees of acceptable species of good form and vigor less than one inch in DBH.

(70) "Shallow, rapidly moving landslide" means any detached mass of soil, rock, or debris that begins as a relatively small landslide on steep slopes and grows to a sufficient size to cause damage as it moves down a slope or a stream channel at a velocity difficult for people to outrun or escape.

(71) "Side channel" means a channel other than a main channel of a stream that only has flowing water when high water level occurs.

(72) "SSBT use" means a stream with salmon, steelhead or bull trout present or otherwise used by salmon, steelhead, or bull trout at any time of the year as determined by the State Forester.

(73) "Significant wetlands" means those wetland types listed in OAR 629-680-0310, that require site specific protection, as follows:

(a) Wetlands that are larger than eight acres;

(b) Estuaries;

(c) Bogs; and

(d) Important springs in eastern Oregon.

(74) "Snag" means a tree which is dead but still standing, and that has lost its leaves or needles and its small limbs.

(75) "Sound snag" means a snag that retains some intact bark or limb stubs.

(76) "Staging tree" is a tree within the vicinity of a roosting site that is used for perching by bald eagles before entering the roost.

(77) "State Forester" means the State Forester or the duly authorized representative of the State Forester.

(78) "Steelhead" means the anadromous life history variant of *Oncorhynchus mykiss*.

(79) "Stream" means a channel, such as a river or creek, which carries flowing surface water during some portion of the year.

(a) For the purposes of the forest practice rules, streams include:

(A) The water itself, including any vegetation, aquatic life, or habitats therein;

(B) Beds and banks below the high water level which may contain water, whether or not water is actually present;

(C) The area between the high water level of connected side channels;

(D) Beaver ponds, oxbows, and side channels if they are connected by surface flow to the stream during a portion of the year; and

(E) Stream-associated wetlands.

(b) "Streams" do not include:

(A) Ephemeral overland flow (such flow does not have a channel); or

(B) Road drainage systems or water developments as defined in section (95) of this rule.

(80) "Stream-associated wetland" means a wetland that is not classified as significant and that is next to a stream.

(81) "Structural exception" means the State Forester determines that no actions are required to protect the resource site. The entire resource site may be eliminated.

(82) "Structural protection" means the State Forester determines that actions are required to protect the resource site. Examples include retaining the nest tree or perch tree.

(83) "Temporal exception" means the State Forester determines that no actions are required to prevent disturbance to birds during the critical period of use.

(84) "Temporal protection" means the State Forester determines that actions are required to prevent disturbance to birds during the critical period of use.

(85) "Timber owner" means any individual, combination of individuals, partnership, corporation or association of whatever nature, other than a landowner, that holds an ownership interest in any forest tree species on forestland.

(86) "Tree leaning over the channel" means a tree within a riparian management area if a portion of its bole crosses the vertical projection of the high water level of a stream.

(87) "Tyege Core Area" means a location with geologic conditions including thick sandstone beds with few fractures. These sandstones weather rapidly and concentrate water in shallow soils creating a higher shallow, rapidly moving landslide hazard. The Tyege Core area is located within coastal watersheds from the Siuslaw watershed south to and including the Coquille watershed, and that portion of the Umpqua watershed north of Highway 42 and west of Interstate 5. Within these boundaries, locations where bedrock is highly fractured or not of sedimentary origin as determined in the field by a geotechnical specialist are not subject to the Tyege Core area slope steepness thresholds.

(88) "Type D stream" means a stream that has domestic water use, but no fish use.

(89) "Type F stream" means a stream with fish use, or both fish use and domestic water use.

(90) "Type N stream" means a stream with neither fish use nor domestic water use.

(91) "Type SSBT stream" means a small or medium stream that is classified as a Type F stream and that has SSBT use. Stream sizes are determined by the State Forester as described in OAR 629-635-0200(15)

(92) "Unit" means an operation area submitted on a notification of operation that is identified on a map and that has a single continuous boundary. Unit is used to determine compliance with ORS 527.676 (down

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log, snag and green live tree retention), 527.740 and 527.750 (harvest type 3 size limitation), and other forest practice rules.

(93) "Vacated roads" are roads that have been made impassable and are no longer to be used for forest management purposes or commercial forest harvesting activities.

(94) "Water bar" means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation and duff so that it does not gain the volume and velocity which causes soil movement or erosion.

(95) "Water development" means water bodies developed for human purposes that are not part of a stream such as waste treatment lagoons, reservoirs for industrial use, drainage ditches, irrigation ditches, farm ponds, stock ponds, settling ponds, gravel ponds, cooling ponds, log ponds, pump chances, or heli-ponds that are maintained for the intended use by human activity.

(96) "Waters of the state" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, wetlands, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

(97) "Wetland" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include marshes, swamps, bogs, and similar areas. Wetlands do not include water developments as defined in section (95) of this rule.

(98) "Wildlife leave trees" means trees or snags required to be retained as described in ORS 527.676 (1).

(99) "Written plan" means a document prepared by an operator, timber owner or landowner that describes how the operation is planned to be conducted.

Stat. Auth.: ORS 527.710(1)

Stats. Implemented: ORS 527.630(5), 527.674 & 527.714

Hist.: FB 31, f. 6-14-72, ef. 7-1-72; FB 39, f. 7-3-74, ef. 7-25-74; FB 1-1978, f. & ef. 1-6-78; FB 5-1978, f. & ef. 6-7-78; FB 3-1983, f. & ef. 9-13-83; FB 1-1985, f. & ef. 3-12-85; FB 2-1985(Temp), f. & ef. 4-24-85; FB 2-1987, f. 5-4-87, ef. 8-1-87; FB 4-1988, f. 7-27-88, cert. ef. 9-1-88; FB 4-1990, f. & cert. ef. 7-25-90; FB 1-1991, f. & cert. ef. 5-23-91; FB 7-1991, f. & cert. ef. 10-30-91; FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; FB 5-1994, f. 12-23-94, cert. ef. 1-1-95; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97, Renumbered from 629-024-0101; DOF 6-2002, f. & cert. ef. 7-1-02; DOF 13-2002, f. 12-9-02 cert. ef. 1-1-03; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06; DOF 7-2006(Temp), f. & cert. ef. 6-27-06 thru 12-23-06; DOF 1-2007, f. & cert. ef. 1-8-07; DOF 2-2013, f. 7-11-13, cert. ef. 9-1-13; DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

629-605-0170

Statutory Written Plans

(1) Definition of "Directly Affect" and "Physical Components" For the purpose of section (4) of this rule:

(a) "Physical components" means materials such as, but not limited to, vegetation, snags, rocks and soil; and

(b) "Directly affect" means that physical components will be moved, disturbed, or otherwise altered by the operation.

(2) Statutory Written Plans for Operations near Type F, Type SSBT and Type D Streams. An operator must submit to the State Forester a written plan as required by ORS 527.670(3) before conducting an operation that requires notification under OAR 629-605-0140, and that is within 100 feet of a Type F, Type SSBT or Type D stream.

(3) Statutory Written Plans for Operations near Wetlands larger than Eight Acres, Bogs or Important Springs in Eastern Oregon. An operator must submit to the State Forester a written plan as required by ORS 527.670(3) before conducting an operation that requires notification under OAR 629-605-0140, and that is within 100 feet of a significant wetland that is a wetland larger than eight acres (not an estuary), a bog, or an important spring in Eastern Oregon as identified in 629-645-0000 (Riparian Management Areas and Protection Measures for Significant Wetlands).

(4) Waiver of Statutory Written Plans. The State Forester may waive, in writing, the requirement for a written plan described in sections (2) and (3) if the operation activity will not directly affect the physical components of the riparian management area. Further direction of when a waiver will be granted is described in Technical Note FP10 dated July 1, 2017.

(5) Statutory Written Plans for Operations near Wildlife Sites and Estuaries. An operator must submit to the State Forester a written plan as required by ORS 527.670(3) before conducting an operation that requires notification under OAR 629-605-0140, and that is within 300 feet of any:

(a) Specific site involving threatened or endangered wildlife species, or sensitive bird nesting, roosting, or watering sites; as listed by approximate legal description, in a document published by the Department of Forestry titled "Cooperative Agreement Between the Board of Forestry and the Fish and Wildlife Commission, March 28, 1984."

(b) Resource site identified in OAR 629-665-0100 (Species Using Sensitive Bird Nesting, Roosting and Watering Sites), 629-665-0200 (Resource Sites Used By Threatened and Endangered Species).

(c) Significant wetland that is classified as an estuary identified in OAR 629-645-0000 (Riparian Management Areas and Protection Measures for Significant Wetlands).

(d) Nesting or roosting site of threatened or endangered species listed by the U.S. Fish and Wildlife Service or by the Oregon Fish and Wildlife Commission by administrative rule.

(6) Statutory Written Plans and Stewardship Agreements. The written plan requirements in section (2), (3) and (5) of this rule do not apply to operations that will be conducted pursuant to a stewardship agreement entered into under ORS 541.423.

(7) Statutory Written Plan Requirements and Notification of Protected Resource Sites. The State Forester shall notify the operator of the presence of any site listed in section (2), (3) or (5) of this rule at any time the State Forester determines the presence of those sites.

(8) The State Forester shall notify the operator that a written plan is required if:

(a) The operation will be within 100 feet of any sites listed in sections (2) or (3) of this rule and the operation will directly affect the physical components of a riparian management area associated with any of those sites; or

(b) The operation will be within 300 feet of any site listed in section (5) of this rule.

(9) Statutory Written Plan Hearing Provisions. Written plans required under sections (2), (3) or (5) of this rule shall be subject to the hearings provisions of ORS 527.700 (Appeals from orders of State Forester hearings procedure; stay of operation); and shall be subject to the provisions of 527.670 (8) through (12) (Commencement of operations; when notice and written plan required; appeal of plan) prescribing certain waiting periods and procedures.

(10) Non-Statutory Written Plans. An operator must submit a written plan as required by ORS 527.670(2) and the rules listed below unless the State Forester waives the written plan requirement. Written plans required by the rules listed below are not subject to the provisions of 527.700(3) or 527.670(10), (11) and (12).

(a) 629-605-0190(1) — Operating near or within sites that are listed in the "Cooperative Agreement Between the Board of Forestry and the Fish and Wildlife Commission, March 28, 1984" or sites designated by the State Forester;

(b) 629-605-0190(2) — Operating near or within habitat sites of any wildlife or aquatic species classified by the Department of Fish and Wildlife as threatened or endangered;

(c) 629-623-0700(1) — Conducting timber harvesting or road construction operations with intermediate or substantial downslope public safety risk;

(d) 629-623-0700(2) — Constructing a stream crossing fill over a debris torrent-prone stream with intermediate or substantial downslope public safety risk;

(e) 629-623-0700(3) — Locating a waste-fill area within a drainage containing debris torrent-prone streams with intermediate or substantial downslope public safety risk;

(f) 629-625-0100(2)(a) — Constructing a road where there is an apparent risk of road-generated materials entering waters of the state from direct placement, rolling, falling, blasting, landslide or debris flow;

(g) 629-625-100(2)(c) — Constructing a road within the riparian management area of a medium or large Type N stream;

(h) 629-625-0100(3) — Constructing a road on high landslide hazard locations;

(i) 629-625-0100(4) — Placing woody debris or boulders in the stream channel of a Type N stream for stream enhancement;

(j) 629-625-0320(1)(b)(B) — Constructing a permanent stream crossing fill over 15 feet deep in a Type N stream;

(k) 629-630-0200(3) — Locating a landing within the riparian management area of a medium or large Type N stream;

(l) 629-630-0700(3) — Yarding across streams classified as medium or large Type N;

(m) 629-630-0800(4)(c) — Constructing a temporary stream crossing fill over 8 feet deep in a Type N stream;

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(n) 629-650-0005 — Operating within 100 feet of a large lake;
(o) 629-660-0050(1) — Removing beaver dams or other natural obstructions located farther than 25 feet from a culvert in a Type N stream;
(p) 629-665-0020(2) — Operating near a resource site requiring special protection; and

(q) 629-665-0210(1) — Operating near a Northern Spotted Owl resource site.

(11) If an operator, timber owner or landowner is required to submit a written plan to the State Forester under subsection (10) of this section:

(a) The State Forester shall review the written plan and may provide comments to the person who submitted the written plan;

(b) Provided that notice has been given as required by ORS 527.670 and OAR 629-605-0150, the operation may commence on the date the State Forester provides comments. If no comments are provided the operation may commence at any time after 14 calendar days following the date the written plan was received;

(c) Comments provided by the State Forester under paragraph (a) of this subsection, to the person who submitted the written plan are for the sole purpose of providing advice to the operator, timber owner or landowner regarding whether the operation described in the written plan is likely to comply with ORS 527.610 to 527.770 and rules adopted thereunder. Comments provided by the State Forester do not constitute an approval of the written plan or operation;

(d) If the State Forester does not comment on a written plan, the failure to comment does not mean an operation carried out in conformance with the written plan complies with ORS 527.610 to 527.770 or rules adopted thereunder nor does the failure to comment constitute a rejection of the written plan or operation;

(e) In the event that the State Forester determines that an enforcement action may be appropriate concerning the compliance of a particular operation with ORS 527.610 to 527.770 or rules adopted thereunder, the State Forester shall consider, but is not bound by, comments that the State Forester provided under this section.

(12) Written Plan Content. Written plans required under OAR 629-605-0170 must contain a description of how the operation is planned to be conducted in sufficient detail to allow the State Forester to evaluate and comment on the likelihood that the operation will comply with the Forest Practices Act or administrative rules.

(13) Written plans required under OAR 629-605-0170 will be considered received when complete with the following information:

(a) A map showing protected resource(s) and the harvest area; and

(b) The specific resource(s) that require protection; and

(c) The practices that may affect the protected resource(s) such as road and landing location, disposal of waste materials, felling and bucking and post operation stabilization measures; and

(d) The specific techniques and methods employed for resource protection such as road and landing design, road construction techniques, drainage systems, buffer strips, yarding system and layout; and

(e) Additional written plan content required in individual rules.

(14) In addition to the other requirements in this rule, written plans for operations within 100 feet of domestic water use portions of Type F, Type SSBT or Type D streams must contain a description of the practices and methods that will be used to prevent sediment from entering waters of the state.

(15) Modification of a written plan shall be required when, based on information that was not available or was unknown at the time the original written plan was reviewed, the State Forester determines the written plan no longer addresses compliance with applicable forest practice rules. Written plans with modifications required under this section shall not be subject to the provisions of ORS 527.670(10) and (11) relating to waiting periods for written plans.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.670

Hist.: FB 3-1983, f. & ef. 9-13-83; FB 3-1985, f. & ef. 6-11-85; FB 4-1988, f. 7-27-88, cert. ef. 9-1-88; FB 4-1990, f. & cert. ef. 7-25-90; FB 7-1991, f. & cert. ef. 10-30-91; FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97, Renumbered from 629-024-0113; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06; DOF 2-2013, f. 7-11-13, cert. ef. 9-1-13; DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

629-605-0173

Plans for an Alternate Practice

(1) Operators must obtain written approval of a plan for an alternate practice from the State Forester before conducting forest practices utilizing protection standards or methods different than those specified in rule or statute.

(2) Plans for an alternate practice must include sufficient information to allow the State Forester to assess the plan to determine that the practices described in the plan will yield results consistent with ORS 527.610 to 527.770 and administrative rules adopted thereunder.

(3) Plans for alternate practices proposed as part of a written plan required by ORS 527.670(3) shall be subject to the hearings provisions of 527.700(3) (Appeals from orders of State Forester hearings procedure; stay of operation); and shall be subject to the provisions of 527.670(10), (11) and (12) (Commencement of operations; when notice and written plan required; appeal of plan) prescribing certain waiting periods and procedures.

(4) An operator must comply with all provisions of an approved plan for an alternate practice.

(5) The following rules require an operator to submit a plan for an alternate practice and obtain approval from the State Forester of the plan before starting the specified practice or operation:

(a) 629-605-0100(2)(a) — Waiving or modifying the rules or statutes for a bona fide research project conducted by a federal or state agency, a college or university, or a private landowner;

(b) 629-605-0100(2)(b) — Waiving or modifying a specific practice when doing so will result in less environmental damage than if the practice is applied;

(c) 629-605-0100(2)(c) — Waiving or modifying a specific practice when doing so will improve soil, water quality, fish habitat, or wildlife habitat;

(d) 629-605-0100(2)(d) — Waiving or modifying rules to provide for public safety or to accomplish a land use change;

(e) 629-605-0100(4) — Waiving or modifying rules for resource sites when a county has an adopted program under OAR 660-016-0005 and OAR 660-016-0010 that has evaluated the resource sites;

(f) 629-605-0173(1) — Conducting forest practices utilizing protection standards or methods different than those specified in rule or statute;

(g) 629-605-0175(2) — Conducting operations that result in a single harvest type 3 unit, or combinations of harvest type 3 units, that exceed the contiguous 120 acre limit on a single ownership;

(h) 629-605-0175(7) — Waiving the harvest type 3 acreage limitations for conversions or disasters described in ORS 527.740(4);

(i) 629-605-0180(3) — Describing reasonable measures to resolve conflicts between an operation and protection of a resource site requiring a written plan under OAR 629-605-0170(1)(b) or (d);

(j) 629-605-0500 — Modifying the protection requirements for streams, lakes, wetlands and riparian management areas for reasons of forest health or because of hazards to public safety or property;

(k) 629-610-0020(3) — Waiving or modifying the reforestation requirements following a stand improvement operation where the residual stand conditions will result in enhanced long-term tree growth;

(l) 629-610-0020(10) — Modifying or waiving reforestation stocking levels if the purposes of the reforestation rules will be achieved or for a research project conducted by a public agency or educational institution;

(m) 629-610-0030(3) — Utilizing natural reforestation methods when an operation results in a reforestation requirement;

(n) 629-610-0040(3) — Extending the time allowed for reforestation when natural reforestation methods are utilized;

(o) 629-610-0050(2) — Counting hardwoods to meet more than 20% of the applicable stocking standards when an operation results in a reforestation requirement;

(p) 629-610-0060(1) — Counting non-native tree species to meet the applicable stocking standards when an operation results in a reforestation requirement;

(q) 629-610-0070(1) — Suspending the reforestation rules for the salvage or conversion of low value forest stands when participating in a forest incentive program;

(r) 629-610-0090(1) — Exempting the reforestation requirements for the purpose of developing forestland for a use that is not compatible with the maintenance of forest tree cover;

(s) 629-615-0300(5) — Modifying the protection requirements for riparian areas, aquatic areas and wetlands when the need for prescribed burning outweighs the benefits of protecting components required to be left;

(t) 629-620-0400(7)(d) — Modifying the protection requirements for aerial application of fungicides or nonbiological insecticides;

(u) 629-625-0320(3) — Modifying the culvert sizing requirements of 629-625-320(2)(a) to reduce the height of fills where roads cross wide flood plains;

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(v) 629-642-0100(13) — Modifying the vegetation retention requirements in the riparian management area along a Type F stream to allow the removal of roadside trees which pose a safety hazard;

(w) 629-642-0105(17) — Modifying the vegetation retention requirements in the riparian management area along a Type SSBT stream to allow the removal of roadside trees which pose a safety hazard;

(x) 629-642-0400(14) — Modifying the vegetation retention requirements in the riparian management area along a Type D or Type N stream to allow the removal of roadside trees which pose a safety hazard;

(y) 629-642-0500(4) — Placing wood in a Type F or Type SSBT stream or conducting other activities to meet the same purpose as leaving green trees and snags along small Type N streams subject to rapidly moving landslides.

(z) 629-642-0700(1)(a) — Utilizing site specific vegetation retention prescriptions for streams and riparian management areas;

(aa) 629-645-0020(1) — Utilizing site specific vegetation retention prescriptions for significant wetlands;

(bb) 629-645-0050(3) — Modifying the vegetation retention requirements for significant wetlands for reasons of forest health;

(cc) 629-650-0040(3) — Modifying the vegetation retention requirements for lakes for reasons of forest health;

(dd) 629-665-0020(1)(b)(C) — Structural or temporal exceptions when proposed forest practices conflict with a resource site;

(ee) 629-665-0110(3) — Structural replacement of an osprey site;

(ff) 629-665-0110(4) — Temporal exceptions near an osprey site;

(gg) 629-665-0120(3) — Structural exceptions of a great blue heron site;

(hh) 629-665-0120(5) — Temporal exceptions near a great blue heron site.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.670(10)-(12), 527.700(2), (5), (6), (8)&(9)

Hist.: DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06; DOF 2-2013, f. 7-11-13, cert. ef. 9-1-13; DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

629-605-0500

Modification of Requirements for Forest Health and Public Safety

Protection requirements for streams, lakes, wetlands and riparian management areas may be modified by approval of a plan for an alternate practice by the State Forester for reasons of forest health or because of hazards to public safety or property. Hazards to public safety or property include hazards to river navigation and hazards to improvements such as roads, bridges, culverts, or buildings. Forest health concerns include fire, insect infestations, disease epidemics, or other catastrophic events not otherwise addressed in OAR 629-642-0600. Such modifications of protection requirements should prevent, reduce or alleviate the forest health conflict or hazard while meeting the intent of the protection goals as much as possible.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.674 & 527.710

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2040; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06; DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

629-611-0000

Purpose

(1) The purpose of OAR 629-611-0000 to 629-611-0020 is to implement ORS 526.490, providing an incentive for landowners to convert parcels of idle land or land in other uses to commercial forest use.

(2) The provisions of ORS 526.490 shall be called the afforestation incentive and OAR 629-611-0000 to 629-611-0020 shall be known as the afforestation incentive rules.

(3) The afforestation incentive in these rules is a one-time exemption from most tree retention requirements in the forest practice rules as described in section (5) of this rule.

(4) For the purposes of the afforestation incentive rules, “planted” trees means those trees that a landowner establishes as an initial forest stand to qualify for the incentive and includes:

(a) All trees the landowner plants or causes to be planted; and

(b) All naturally established trees that are established within ten years prior to, or following, the date the parcel is certified as qualified for the incentive.

(5) Notwithstanding forest practice rule provisions prohibiting harvest of trees, the afforestation incentive allows landowners to harvest all planted trees on certified afforestation incentive parcels with the following limitations:

(a) The afforestation incentive applies only to the land and timber located more than 20 feet from the high water level of the following streams:

(A) Type F streams;

(B) Type SSBT streams;

(C) Type D streams; or

(D) Large or medium Type N streams.

(b) Any forest operations on such parcels must comply with all forest practice rules that require practices other than restrictions on harvesting the planted trees.

(c) A planted tree that later becomes a key component of a specified resource site normally requiring protection under the forest practice rules may be harvested; however, the State Forester may temporarily prohibit harvesting during an annual critical period of use of the site, as provided in the specified resource site protection rules.

(d) (For information only) Federal law prohibits a person from taking threatened or endangered species. Taking, under the federal law, may include significant alteration of habitat on any class of land ownership. Compliance with the afforestation incentive rules is not in lieu of compliance with any federal requirements related to the federal Endangered Species Act.

Stat. Auth.: ORS 526.490

Stats. Implemented: ORS 526.490

Hist.: DOF 6-1998, f. 3-31-98, cert. ef. 5-1-98; DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

629-615-0300

Prescribed Burning

(1) Prescribed burning is a tool used to achieve reforestation, maintain forest health, improve wildlife habitat and reduce wildfire hazard. Prescribed burning is to be done consistent with protection of air and water quality, and fish and wildlife habitat. The purpose of this rule is to ensure that necessary prescribed burning is planned and managed to maximize benefits and minimize potential detrimental effects.

(2) When planning and conducting prescribed burning, operators shall:

(a) Comply with the rules of Oregon’s “Smoke Management Plan.”

(b) Adequately protect reproduction and residual timber, humus and soil surface.

(c) Consider possible detrimental effects of prescribed burning upon riparian management areas, streams, lakes, wetlands, and water quality, and how these effects can be best minimized.

(d) Lay out the unit and use harvesting methods that minimize detrimental effects to riparian management areas, streams, lakes, wetlands, and water quality during the prescribed burning operation.

(e) Fell and yard the unit to minimize accumulations of slash in channels and within or adjacent to riparian management areas.

(f) Minimize fire intensity and amount of area burned to that necessary to achieve reforestation, forest health, or hazard reduction needs.

(3) Operators shall describe in a written plan how detrimental effects will be minimized when burning within 100 feet of Type F, Type SSBT and Type D streams, within 100 feet of large lakes, within 100 feet of wetlands larger than eight acres (non estuaries), bogs and important springs in eastern Oregon and within 300 feet of estuaries; especially when burning on highly erosive soils, for example decomposed granite soils and slopes steeper than 60 percent.

(4) During prescribed burning operations, operators shall protect components such as live trees, snags, downed wood, and understory vegetation required to be retained by OAR 629-635-0310 through 629-650-0040. When the operator has taken reasonable precautions to protect the components, but some detrimental effects occur, the intent of the rule is met if the overall integrity of the riparian management area is maintained. Operators shall not salvage trees killed by prescribed fire in a riparian management area if the trees were retained for purposes of 629-635-0310 through 629-655-0000.

(5) When the need for prescribed burning outweighs the benefits of protecting components required to be left within the riparian area, aquatic area and wetlands, protection requirements may be modified through a plan for an alternate practice. Approval of such a plan shall consider the environmental impacts and costs of alternative treatments.

(6) (For information only) When water is to be withdrawn from the waters of the state for use in mixing pesticides or for slash burning, ORS 537.141 requires operators to notify the Water Resources Department and the Department of Fish and Wildlife. Notification to the State Forester does not satisfy this requirement.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.674 & 527.715

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97, Renumbered from 629-024-0302; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06; DOF 2-2013, f. 7-11-13, cert. ef. 9-1-13; DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

ADMINISTRATIVE RULES

629-620-0300

Locations of Mixing, Transfer, and Staging Areas for Chemicals and Other Petroleum Products

(1) Operators shall conduct the following activities only in locations where spillage of chemicals or other petroleum products will not enter the waters of the state:

- (a) Mixing chemicals;
 - (b) Transferring chemicals or other petroleum products between equipment or containers including, but not limited to, fueling of aircraft or heavy equipment;
 - (c) Cleaning tanks or equipment used during chemical applications;
 - (d) Landing and staging aircraft.
- (2) Notwithstanding section (1), operators shall not locate chemical mixing and staging areas for aerial chemical applications within 100 feet of Type F, Type SSBT or Type D streams.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

629-620-0400

Protection of the Waters of the State and Other Resources When Applying Chemicals

(1) When applying chemicals aerially or from the ground, operators shall protect waters of the state and other forest resources by following the requirements of the chemical product label and by meeting the additional protection measures listed in this rule.

(2) When applying herbicides near or within riparian management areas or waters of the state, operators shall maintain vegetation required to be protected by the water protection rules.

(3) Weather conditions such as temperature, relative humidity, wind speed, wind direction, atmospheric temperature inversions, and precipitation may strongly affect the deposition and drift of chemicals during aerial and pressurized, ground-based chemical applications. Operators shall apply chemicals only under weather conditions which will protect non-target forest resources and comply with the product label and the other sections of this rule.

(4) Except where the product label or sections (2), (6), or (7) apply more stringent requirements, when applying chemicals by aircraft, operators shall not directly apply chemicals within 60 feet of:

- (a) Significant wetlands;
- (b) The aquatic areas of Type F, Type SSBT and Type D streams;
- (c) The aquatic areas of large lakes;
- (d) The aquatic areas of other lakes with fish use; or
- (e) Other areas of standing open water larger than one-quarter acre at the time of the application.

(5) Except where the product label or sections (2) or (6) apply more stringent requirements, when applying chemicals from the ground, operators shall not directly apply chemicals within 10 feet of:

- (a) Significant wetlands;
- (b) The aquatic areas of Type F, Type SSBT and Type D streams;
- (c) The aquatic areas of large lakes;
- (d) The aquatic areas of other lakes with fish use; or
- (e) Other areas of standing open water larger than one-quarter acre at the time of the application.

(6) Operators shall not directly apply fertilizers within 100 feet of Type D streams and the domestic use portions of Type F or Type SSBT streams. For other waters of the state, no untreated strips are required to be left by operators when applying fertilizers, except that operators shall not directly apply fertilizers to:

- (a) The aquatic areas of other Type F or Type SSBT streams or to large and medium Type N streams;
- (b) Significant wetlands;
- (c) The aquatic areas of large lakes;
- (d) The aquatic areas of other lakes with fish use; or
- (e) Other areas of standing open water larger than one-quarter acre at the time of the application.

(7)(a) Except as allowed under subsections (d) and (e), operators shall not directly apply fungicides or non-biological insecticides by aircraft, within 300 feet of:

- (A) Significant wetlands;
- (B) The aquatic areas of Type F, Type SSBT and Type D streams;
- (C) The aquatic areas of large lakes;
- (D) The aquatic areas of other lakes with fish use; or
- (E) Other areas of standing open water larger than one-quarter acre at the time of the application.

(b) Operators shall not directly apply fungicides or non-biological insecticides by aircraft within 60 feet of the aquatic areas of Type N streams containing flowing water at the time of application.

(c) For the purpose of this rule, "biological insecticide" means any insecticide containing only naturally occurring active ingredients including, but not limited to, viruses, bacteria, semiochemicals (pheromones), or fungi.

(d) Plans for alternate practices that modify the requirements of subsections (a) and (b) may be approved by the State Forester. Approvals of such plans shall be based on a written finding by the State Forester determining that:

(A) Such a modification is essential to control a fungus or a population of an insect species to reduce damage to, and to better provide for, the overall maintenance of forest resources protected under the Forest Practices Act;

(B) The operational or weather condition constraints placed on the application by the plan for alternate practice, in addition to the requirements of the forest practice rules and the product label, will reduce the potential for the fungicide or non-biological insecticide to drift outside the operation area or to enter the waters of the state; or

(C) Adequate documentation has been submitted by the operator indicating the toxicity to humans, fish populations, or to aquatic invertebrate populations of the fungicide or non-biological insecticide to be applied is lower than the documented toxicity of the fungicide chlorothalonil or the non-biological insecticide carbaryl, as used in forestry prior to September 4, 1996.

(e) The requirements of sections (a) and (b) do not apply to pest eradication programs conducted on forestland by the Department of Agriculture.

(8) The operator shall make all aerial chemical applications parallel to the edge of the water when applying chemicals within 100 feet of:

- (a) Significant wetlands;
- (b) The aquatic areas of Type F, Type SSBT and Type D streams;
- (c) The aquatic areas of large lakes;
- (d) The aquatic areas of other lakes with fish use; or
- (e) Other areas of standing open water larger than one-quarter acre at the time of the application.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

629-620-0800

Notification of Community Water System Managers When Applying Chemicals

(1) The purpose of this rule is to ensure that community water system managers are appropriately notified of planned chemical operations so that they can coordinate their monitoring activities with planned operations.

(2) This rule applies to community water systems where the surface water drainage area upstream of their intake is 100 square miles or less. The State Forester shall maintain a list of community water systems for which notification is required. A community water system with a drainage area of more than 100 square miles upstream of its intake may request to be added to the list based upon its ability to conduct effective monitoring in the watershed. The list shall be available at department field offices where notifications are submitted.

(3) When chemicals will be aerially applied within 100 feet, or applied from the ground within 50 feet of domestic portions of Type F, Type SSBT or Type D streams, and the water use is by a community water system as designated under section (2) of this rule, the operator shall notify the water system manager of a planned chemical operation at least 15 days before the operation commences.

(4) The operator shall provide the following additional information before commencing the operation if requested by the manager of the affected water system at the time of notification required in section (3) above:

- (a) The application technology that will be used;
- (b) Practices that will be followed to minimize drift toward the stream;
- (c) Any monitoring efforts that will be conducted by the landowner; and
- (d) The planned time schedule for the application.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97, Renumbered from 629-024-0211; DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

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629-623-0300

Public Safety Risk Levels

(1) The exposure categories described in OAR 629-623-0200 and the impact rating described in 629-623-0250 are used to determine the downslope public safety risk level and the applicable forest practice rules that apply to the operation, as described in Sections (2) through (10) of this rule.

Substantial downslope public safety risk

(2) For Exposure Category A, substantial downslope public safety risk exists if the impact rating is extreme or serious.

(3) For Exposure Category B, substantial downslope public safety risk exists if the impact rating is extreme and the State Forester informs the operator that these site specific conditions warrant substantial public safety risk practices.

(4) Substantial Downslope Public Safety Risk operations are regulated by OARs 629-623-0400, 629-623-0450, 629-623-0600, and 629-623-0700.

Intermediate downslope public safety risk

(5) For Exposure Category A, intermediate downslope public safety risk exists if the impact rating is moderate.

(6) For Exposure Category B, intermediate downslope public safety risk exists if the impact rating is serious.

(7) For Exposure Category C, intermediate downslope public safety risk exists if the impact rating is extreme and the State Forester informs the operator that these site specific conditions warrant intermediate public safety risk practices.

(8) Intermediate Downslope Public Safety Risk operations are regulated by OARs 629-623-0500, 629-623-0550, 629-623-0600, 629-623-0700, and 629-630-0500.

Low downslope public safety risk

(9) All other operations not described in sections 2, 3, 5, 6 and 7 of the rule are determined to have low downslope public safety risk.

(10) Low Downslope Public Safety Risk operations are regulated by OAR 629-630-0500 and by OAR 629-625-0000 through 0700 and all other applicable rules.

Applicability of regulations and use of leave trees

(11) As required by ORS 195.256(4), forest practice rules shall not apply to risk situations arising solely from the construction of a building permitted under ORS 195.260(1)(c).

(12) Leave trees required to comply with timber harvesting rules for shallow, rapidly moving landslides and public safety may also be used to comply with ORS 527.676 except those required to be retained in riparian management areas by OAR 629-642-0000 through 629-642-0800.

Stat. Auth.: ORS 527.710(10)

Stats. Implemented: ORS 527.630(5) & 527.714

Hist.: DOF 13-2002, f. 12-9-02 cert. ef. 1-1-03; DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

629-625-0100

Written Plans for Road Construction

(1) A properly located, designed, and constructed road greatly reduces potential impacts to water quality, forest productivity, fish, and wildlife habitat. To prevent improperly located, designed, or constructed roads, a written plan is required in the sections listed below.

(2) In addition to the requirements of the water protection rules, operators must submit a written plan to the State Forester before:

(a) Constructing a road where there is an apparent risk of road-generated materials entering waters of the state from direct placement, rolling, falling, blasting, landslide or debris flow;

(b) Conducting machine activity in Type F, Type SSBT or Type D streams, lakes or significant wetlands; or

(c) Constructing roads in riparian management areas.

(3) Operators shall submit a written plan to the State Forester before constructing roads on high landslide hazard locations. Operators and the State Forester shall share responsibility to identify high landslide hazard locations and to determine if there is public safety exposure from shallow, rapidly moving landslides using methods described in OAR 629-623-0000 through 0300. If there is public safety exposure, then the practices described in 629-623-0400 through 0800 shall also apply.

(4) In addition to the requirements of the water protection rules, operators shall submit a written plan to the State Forester before placing woody debris or boulders in stream channels for stream enhancement.

Stat. Auth.: ORS 527.710(2)

Stats. Implemented: ORS 527.630(3), 527.765 & 527.714

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 12-2002, f. 12-9-02 cert. ef. 1-1-03; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06; DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

629-625-0430

Stream Protection

(1) When constructing stream crossings, operators shall minimize disturbance to banks, existing channels, and riparian management areas.

(2) In addition to the requirements of the water protection rules, operators shall keep machine activity in beds of streams to an absolute minimum. Acceptable activities where machines are allowed in streambeds, such as installing culverts, shall be restricted to periods of low water levels. Operators shall submit a written plan to the State Forester for machine activity in Type F, Type SSBT or Type D streams; lakes; and significant wetlands.

(3) For all roads constructed or reconstructed operators shall install water crossing structures where needed to maintain the flow of water and passage of adult and juvenile fish between side channels or wetlands and main channels.

(4) Operators shall leave or re-establish areas of vegetation between roads and waters of the state to protect water quality.

(5) Operators shall remove temporary stream crossing structures promptly after use, and shall construct effective sediment barriers at approaches to channels.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.674, 527.715 & 527.765

Hist.: FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06; DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

629-625-0700

Wet Weather Road Use

(1) The purpose of this rule is to reduce delivery of fine sediment to streams caused by the use of forest roads during wet periods that may adversely affect downstream water quality in Type F, Type SSBT or Type D streams.

(2) Operators shall use durable surfacing or other effective measures that resist deep rutting or development of a layer of mud on top of the road surface on road segments that drain directly to streams on active roads that will be used for log hauling during wet periods.

(3) Operators shall cease active road use where the surface is deeply rutted or covered by a layer of mud and where runoff from that road segment is causing a visible increase in the turbidity of Type F, Type SSBT or Type D streams as measured above and below the effects of the road.

Stat. Auth.: ORS 527.710(2)

Stats. Implemented: ORS 527.630(3), 527.765 & 527.714

Hist.: DOF 12-2002, f. 12-9-02 cert. ef. 1-1-03; DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

629-630-0600

Felling; Removal of Slash

(1) Operators shall fell, buck, and limb trees in ways that minimize disturbance to channels, soils and retained vegetation in riparian management areas, streams, lakes and all wetlands greater than one-quarter acre, and that minimize slash accumulations in channels, significant wetlands and lakes.

(2) During felling operations operators shall:

(a) Whenever possible, fell all conifer trees away from riparian management areas, streams, lakes and significant wetlands, except for trees felled for stream improvement projects.

(b) On steep slopes, use felling practices such as jacking, line pulling, high stumps, whole tree yarding, or stage-cutting as necessary and feasible to prevent damage to vegetation retained in riparian management areas, soils, streams, lakes and significant wetlands.

(c) When hardwoods must be felled into or across streams, lakes or significant wetlands, operators shall:

(A) Buck and yard the trees to minimize damage to beds, banks and retained vegetation.

(B) When it can be done consistently with protecting beds and banks, yard hardwood trees or logs away from the water before limbing.

(3) Operators shall minimize the effects of slash that may enter waters of the state during felling, bucking, limbing or yarding by:

(a) Removing slash from Type F, Type SSBT and Type D streams, lakes and significant wetlands as an ongoing process (removal within 24 hours of the material entering the stream) during the harvest operation.

(b) Not allowing slash to accumulate in Type N streams, lakes or wetlands in quantities that threaten water quality or increase the potential for mass debris movement.

(c) Placing any slash that is removed from streams, lakes, or wetlands above high water levels where it will not enter waters of the state.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2610; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97, Renumbered from 629-660-0000; DOF 6-2005(Temp), f. & cert.

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ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06; DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

629-630-0700

Yarding; Cable Equipment Near Waters of the State

(1) Operators shall maintain the purposes and functions of vegetation required to be retained in riparian management areas and minimize disturbance to beds and banks of streams, lakes, all wetlands larger than one-quarter acre, and retained vegetation during cable yarding operations.

(2) Operators shall minimize the yarding of logs across streams, lakes, significant wetlands, and other wetlands greater than one-quarter acre whenever harvesting can be accomplished using existing roads or other practical alternatives.

(3) Operators may use yarding corridors through retained streamside trees as long as the numbers and widths of yarding corridors are minimized. Operators shall submit a written plan to the State Forester when yarding across any of the waters listed in subsections (a) through (f) of this section:

- (a) Type F streams;
- (b) Type SSBT streams;
- (c) Type D streams;
- (d) Large or medium Type N streams;
- (e) Lakes; or
- (f) Significant wetlands

(4) When yarding across any of the waters listed in subsections (a) through (f) of this section is necessary, it shall be done by swinging the yarded material free of the ground in the aquatic areas and riparian areas.

- (a) Type F streams;
- (b) Type SSBT streams;
- (c) Type D streams;
- (d) Large or medium Type N streams;
- (e) Lakes; or
- (f) Significant wetlands.

(5) Cable yarding across streams classified as small Type N or other wetlands greater than one-quarter acre shall be done in ways that minimize disturbances to the stream channel or wetland and minimize disturbances of retained streamside vegetation.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2620; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97, Renumbered from 629-660-0010; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06; DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

629-630-0800

Yarding; Ground-based Equipment Near Waters of the State

(1) Operators shall maintain the purposes and functions of vegetation required to be retained in riparian management areas, and minimize disturbances to beds and banks of streams, lakes, all wetlands larger than one-quarter acre, and retained vegetation during ground-based yarding operations.

(2) Operators shall not operate ground-based equipment within any stream channel except as allowed in the rules for temporary stream crossings.

(3) Operators shall minimize the number of stream crossings.

(4) For crossing streams that have water during the periods of the operations, operators shall:

(a) Construct temporary stream crossing structures such as log crossings, culvert installations, or fords that are adequate to pass stream flows that are likely to occur during the periods of use. Structures shall be designed to withstand erosion by the streams and minimize sedimentation.

(b) Choose locations for temporary stream crossing structures which minimize cuts and fills or other disturbances to the stream banks.

(c) Minimize the volume of material in any fills constructed at a stream crossing. Fills over eight feet deep contain such a large volume of material that they can be a considerable risk to downstream beneficial uses should the material move downstream by water. For any fill for a temporary crossing that is over eight feet deep, operators shall submit to the State Forester a written plan that includes a description of how the fills would be constructed, passage of water, and the length of time the fills would be in the stream.

(d) Design temporary structures so that fish movement is not impaired on Type F or Type SSBT streams.

(e) Remove all temporary stream crossing structures immediately after completion of operations or prior to seasonal runoff that exceeds the water carrying capacity of the structures, whichever comes first. When removing temporary structures, operators shall place fill material where it will not enter waters of the state.

(5) For stream crossings where the channels do not contain water during the periods of the operations, operators are not required to construct temporary crossings as long as disturbances are no greater than what would occur if structures were constructed. Soil that enters the channels during the yarding operations must be removed after completion of the operation or prior to stream flow, whichever comes first. When removing such materials from the channels, operators shall place the materials in locations where they will not enter waters of the state.

(6) Operators shall construct effective sediment barriers such as water bars, dips, or other water diversion on stream crossing approaches after completion of operations, or prior to rainy season runoff, whichever comes first.

(7) Machine activity near (generally within 100 feet) streams, lakes, and other wetlands greater than one-quarter acre shall be conducted to minimize the risk of sediment entering waters of the state and preventing changes to stream channels. Operators shall only locate, construct, and maintain skid trails in riparian management areas consistent with the harvesting rules.

(8) Operators shall minimize the amount of exposed soils due to skid trails within riparian management areas. Except at stream crossings, operators shall not locate skid trails within 35 feet of Type F, Type SSBT or Type D streams. Operators shall provide adequate distances between all skid trails and waters of the state to filter sediment from runoff water.

(9) Operators shall locate and construct skid trails so that when high stream flow occurs water from the stream will not flow onto the skid trail.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2630; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97, Renumbered from 629-660-0020; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06; DOF 2-2013, f. 7-11-13, cert. ef. 9-1-13; DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

629-635-0100

Purpose and Goals

(1) The leading use on private forestland is the growing and harvesting of trees, consistent with sound management of soil, air, water, fish and wildlife resources. There is a unique concentration of public resource values in and near waters of the state because these areas are critical for the overall maintenance of fish and wildlife and for maintaining water quality. Consequently, the policies of the Forest Practices Act, including encouraging economically efficient forest practices, are best achieved by focusing protection measures in riparian management areas, where the emphasis is on providing water quality and fish and wildlife habitat.

(2) OAR 629-635-0000 through 629-660-0060 are known as the "water protection rules."

(3) The purpose of the water protection rules is to protect, maintain and, where appropriate, improve the functions and values of streams, lakes, wetlands, and riparian management areas. Active management is encouraged where appropriate to meet this purpose. These functions and values include water quality, hydrologic functions, the growing and harvesting of trees, and fish and wildlife resources.

(4) Plans for alternate practices may be used to alter vegetation retention requirements in the water protection rules based on local site conditions. The plans may include but are not limited to site specific vegetation retention prescriptions as described in OAR 629-642-0700, (for streams) and 629-645-0020 (for wetlands). Operators are encouraged to:

(a) Evaluate site specific conditions in waters and riparian management areas; and

(b) Develop plans for alternate practices that will:

(A) Maintain, enhance, or restore riparian functions in streams, wetlands, and lakes; or

(B) Meet the purposes and goals of the water protection rules while better meeting operational or other objectives.

(5) General vegetation retention prescriptions for streams, lakes and wetlands apply where current vegetation conditions within the riparian management area have achieved or are likely to achieve the desired future condition in a "timely manner." Landowners are encouraged to manage stands within riparian management areas in order to grow trees in excess of what must be retained so that the opportunity is available to harvest the excess.

(6) Alternative vegetation retention prescriptions for streams allow incentives for operators to actively manage vegetation where existing vegetation conditions are not likely to achieve the desired future condition in a "timely manner."

(7) The overall goal of the water protection rules is to provide resource protection during operations adjacent to and within streams, lakes, wetlands and riparian management areas so that, while continuing to grow

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and harvest trees, the protection goals for fish, wildlife, and water quality are met.

(a) The protection goal for water quality (as prescribed in ORS 527.765) is to ensure through the described forest practices that, to the maximum extent practicable, non-point source discharges of pollutants resulting from forest operations do not impair the achievement and maintenance of the water quality standards.

(b) The protection goal for fish is to establish and retain vegetation consistent with the vegetation retention objectives described in OAR 629-642-0000 (streams), 629-645-0000 (significant wetlands), and 629-650-0000 (lakes) that will maintain water quality and provide aquatic habitat components and functions such as shade, large wood, and nutrients.

(c) The protection goal for wildlife is to establish and retain vegetation consistent with the vegetation retention objectives described in OAR 629-642-0000 (streams), 629-645-0000 (significant wetlands), and 629-650-0000 (lakes) that will maintain water quality and habitat components such as live trees of various species and size classes, shade, snags, downed wood, and food within riparian management areas. For wildlife species not necessarily reliant upon riparian areas, habitat in riparian management areas is also emphasized in order to capitalize on the multiple benefits of vegetation retained along waters for a variety of purposes.

Stat. Auth.: ORS 527.710, 527.630(3), 527.714 & 526.016(4)

Stats. Implemented: 527.714, 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2000; DOF 8-2006, f. & cert. ef. 10-31-06; DOF 2-2013, f. 7-11-13, cert. ef. 9-1-13; DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

629-635-0110

Monitoring

(1) Monitoring and evaluation of the water protection rules are necessary because of the innovative approach taken in the rules. Monitoring and evaluation are needed to increase the level of confidence of all concerned that the rules will maintain and improve the condition of the riparian vegetation and waters of the state over time.

(2) In cooperation with state and federal agencies, landowners and other interested parties, the State Forester shall conduct monitoring on a continuing basis to evaluate the effectiveness of the water protection rules. The monitoring shall determine the effectiveness of the rules to meet the goals of the Forest Practices Act and the purposes stated in the rules, as well as their workability and operability.

(3) It is the Board of Forestry's intent that the State Forester and its cooperators place a high priority on assessing the monitoring needs and securing adequate resources to conduct the necessary monitoring. The State Forester shall work with its cooperators and the Legislature to secure the necessary resources, funding and coordination for effective monitoring.

(4) The State Forester shall report to the Board of Forestry annually about current monitoring efforts and, in a timely manner, present findings and recommendations for changes to practices. The Board of Forestry shall consider the findings and recommendations and take appropriate action.

Stat. Auth.: ORS 527.710, Other 527.630(3), 527.714, 526.016(4)

Stats. Implemented: 527.714, 527.715, 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2010; DOF 8-2006, f. & cert. ef. 10-31-06; DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

629-635-0200

Water Classification

(1) The purpose of this water classification system is to match the physical characteristics and beneficial uses of a water body to a set of appropriate protection measures.

(2) For the purposes of applying appropriate protection measures, the State Forester shall classify waters of the state as streams, wetlands, or lakes.

(3) The State Forester shall further classify streams according to their beneficial uses and size.

(4) The State Forester shall classify streams into one of the following four beneficial use categories:

- (a) Type F;
- (b) Type SSBT;
- (c) Type D;
- (d) Type N.

(5) For purposes of classification, a stream is considered to have domestic water use only if a water use permit has been issued by the Oregon Water Resources Department.

(6) A channel is considered to have domestic water use upstream of an intake for the distances indicated below:

(a) For domestic water use that is a community water system (as defined under OAR 333-061-0020), Type D classification shall initially apply to the length of stream that was designated as Class I under the clas-

sification system that was in effect on April 22, 1994, which is that shown on district water classification maps at the time of adoption of this rule.

(b) For domestic water use that is not a community water system, Type D classification shall be initially applied for the shortest of the following distances:

(A) The distance upstream of the intake to the farthest upstream point of summer surface flow;

(B) Half the distance from the intake to the drainage boundary; or

(C) 3000 feet upstream of the intake.

(c) Type D classification shall apply to tributaries off the main channel as long as the conditions of subsections (6)(a) and (b) of this rule apply.

(7)(a) A representative of a community water system or other domestic water permit holder may request that the State Forester designate additional lengths of channels upstream of a domestic water intake or reservoir as Type D. The representative or permit holder must present evidence that the additional stream protection is needed. The State Forester will decide whether or not to extend Type D classification to these other channels based on evidence presented by the requesting party showing that protection measures associated with Type N classification would be insufficient to prevent adverse detrimental temperature increases, turbidity increases, or other adverse water quality changes at the domestic water use intake or reservoir.

(b) The process and criteria described in subsection (7)(a), and the criteria under section (6) of this rule will be used to evaluate the extent of Type D classification for new community water systems.

(c) The State Forester will decide whether or not to extend the length of Type D classification within 30 days of the presentation of evidence.

(8) The domestic water use classification may be waived by the State Forester at the request of a landowner who is the sole domestic water use permit holder for an intake and who owns all the land along upstream channels that would be affected by the classification related to that intake. This waiver shall not affect the classification related to downstream domestic water use intakes.

(9) A stream or lake will be considered to have fish use if inhabited at any time of the year by anadromous or game fish species or fish that are listed as threatened or endangered species under the federal or state endangered species acts.

(10) The fish use classification does not apply to waters where fish were introduced through a fish stocking permit that includes documentation that the stream had no fish prior to stocking.

(11) For the purposes of stream classification, the State Forester will use the procedures in this section to determine if a stream has fish use.

(a) For stream segments where field surveys for fish use show that fish use ends at a natural barrier to fish use or other point that is not an artificial obstruction to fish passage, the State Forester will designate fish use based on the survey.

(b) For stream segments where field surveys for fish use show that fish use ends at an artificial obstruction to fish passage, the State Forester will designate fish use as continuing upstream from the artificial obstruction to the first natural barrier to fish use.

(c) For stream segments where field surveys for fish use have not been conducted, the State Forester will designate fish use as continuing upstream from a point of known fish use and ending at the first natural barrier to fish use, without respect to any artificial obstructions to fish passage. An operator may request that the State Forester conduct a fish presence survey to verify this designation of fish use in stream segments associated with an operation scheduled to start between 12 and 24 months after the request.

(A) The State Forester will make a good faith effort to conduct the requested surveys and will prioritize its survey work taking into account landowners without the financial or technical resources to conduct the surveys themselves.

(B) As an option, the landowner may conduct the fish presence survey.

(C) If neither the landowner nor the State Forester is able to conduct the survey before the operation begins, the Type F classification applies up to the first natural barrier to fish use.

(d) To be used for stream classification under this section, field surveys for fish use must be conducted according to the protocol in "Surveying Forest Streams for Fish Use," published by the Oregon Department of Forestry and the Oregon Department of Fish and Wildlife.

(e) The State Forester may use other information to determine the upstream extent of fish use including but not limited to field surveys for fish use by landowners or other entities, and local knowledge of stream conditions, natural barriers to fish use, or fish presence.

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(f) An operator may request an exception to Type F stream classification above an artificial obstruction to fish passage that is documented by field survey as the end of fish use. The State Forester will grant the request upon determining that the artificial obstruction is likely to continue to prevent fish passage for a period of time exceeding that needed to regrow trees to a size that would provide key pieces of large wood.

(g) When an exception to Type F stream classification is made above an artificial obstruction to fish passage, the State Forester will classify the stream as either Type D or Type N as appropriate and operators must apply the corresponding vegetation retention requirements.

(h) For the purposes of ORS 215.730(1)(b)(C), Type N streams are equivalent to "Class II streams."

(12) For the purposes of stream classification the State Forester will use the procedures in this section to determine if a stream has fish use or both fish use and SSBT use.

(a) Streams where the upstream extent of fish use is determined using field methods that also observe SSBT use where those stream segments have not previously been identified as having SSBT use, will be added to the Type SSBT classification in accordance with the Data Standard and Update Protocol referenced in OAR 629-635-0200 (13).

(b) For streams where SSBT use is based on observations or habitat, and where that use exists farther upstream than the upstream extent of fish use identified by field methods, the State Forester will use the farthest upstream segment with SSBT use to reclassify the end of fish use.

(c) For streams where SSBT use is based on observations or habitat, and where that use exists farther upstream than the upstream extent of fish use identified by non-field methods, the State Forester will use the farthest upstream segment with SSBT use to reclassify the end of fish use.

(d) For streams where SSBT use is based on concurrence of professional opinion, and where that use exists farther upstream than the upstream extent of fish use identified by field methods, the State Forester will use the farthest upstream segment with fish use to reclassify the end of SSBT use.

(e) For streams where SSBT use is based on concurrence of professional opinion, and where that use exists farther upstream than the upstream extent of fish use identified by non-field methods, the State Forester will use the farthest upstream segment with SSBT use to reclassify the end of fish use. The State Forester will re-survey, using field methods, for the upstream extent of fish use upon written request from a landowner whose land immediately adjoins a Type SSBT stream segment described in this subsection.

(f) A landowner may provide evidence to the State Forester that clearly identifies a waterfall or chute type of natural barrier to SSBT use based on field methods under OAR 629-635-0200(11). The State Forester will evaluate that evidence and make a determination on whether or not to adjust the extent of SSBT use within 30 days of presentation of evidence.

(13) The State Forester will use the standards and procedures in this section to determine if a stream is Type SSBT.

(a) The State Forester will initially classify SSBT use stream segments based on the Fish Habitat Distribution Database on July 1, 2017, excluding historical use stream segments and stream segments identified using habitat evaluation based on modeling according to the Oregon Fish Habitat Distribution Data Standard, Version 3.0, February, 2015. (Data Standard) and Oregon Department of Fish and Wildlife Fish Habitat Distribution Data Update Protocol, September, 2005. (Update Protocol).

(b) When advised by the Oregon Department of Fish and Wildlife (ODFW) that new or higher quality data are available on the distribution of SSBT use, the State Forester will evaluate the need to reclassify SSBT use stream segments. Otherwise, evaluation of new or higher quality data and subsequent reclassification of SSBT use stream segments will occur at least every 4 years.

(c) As needed, the State Forester will reclassify SSBT use stream segments, except for stream segments added based on concurrence of professional opinion as defined in the Data Standard.

(d) The State Forester will apply SSBT use stream segments to operations described in notifications submitted after the date the stream segments are classified as Type SSBT.

(e) If the Data Standard or Update Protocol is revised substantively in any way, the State Forester and the Board of Forestry will evaluate if changes to this rule are required.

(f) Until the State Forester and the Board of Forestry have reviewed and approved revisions to the Data Standard or Update Protocol per subsection (e), the State Forester will not reclassify SSBT use stream segments based on information from the new portions of the ODFW Data Standard or Update Protocol.

(14) For each of the four beneficial use categories (Type F, Type SSBT, Type D, and Type N), streams shall be categorized further according to three size categories: large, medium, and small. The size categories are based on average annual flow.

(a) Small streams have an average annual flow of two cubic feet per second or less.

(b) Medium streams have an average annual flow greater than 2 and less than 10 cubic feet per second.

(c) Large streams have an average annual flow of 10 cubic feet per second or greater.

(15) The assignment of size categories to streams on forestland will be done by the State Forester as follows:

(a) The State Forester will index average annual flow to the upstream drainage area and average annual precipitation. The methodology is described in Technical Note FP1 dated April 11, 1994.

(b) Actual measurements of average annual flow may substitute for the calculated flows described in the technical note.

(c) Any stream with a drainage area less than 200 acres shall be assigned to the small stream category regardless of the flow index calculated in (13)(a).

(16) Wetlands shall be classified further as indicated below:

(a) Significant wetlands, which are:

(A) Wetlands larger than 8 acres;

(B) Estuaries;

(C) Bogs; and

(D) Important springs in eastern Oregon.

(b) Stream-associated wetlands that are less than 8 acres are classified according to the stream with which they are connected.

(c) All other wetlands, including seeps and springs are classified according to their size as either "other wetlands greater than one-quarter acre" or "other wetlands less than one-quarter acre."

(17) Lakes shall be classified further as indicated below:

(a) "Large lakes" greater than 8 acres.

(b) All other lakes as "other lakes."

Stat. Auth.: ORS 527.710, 527.630(3), 527.714 & 526.016(4)

Stats. Implemented: 527.714, 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2100; DOF 9-2006, f. & cert. ef. 10-31-06; DOF 2-2013, f. 7-11-13, cert. ef. 9-1-13; DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

629-635-0210

Designation of Waters; Notice to Landowners; Reconsideration

(1) The State Forester shall maintain a map showing the classification of waters of the state in each Department of Forestry unit office where notice of operations required by ORS 527.670(6) may be submitted. The map shall show streams, lakes and significant wetlands of known classification within the geographic area of responsibility for that unit office. For streams, the maps shall indicate the size class and, when known, extent of fish use, extent of SSBT use, and domestic water use classification.

(2) Once a water of the state has been classified according to OAR 629-635-0200, the State Forester shall not change the classification without written notice to the landowners immediately adjoining the portion(s) of water to be reclassified. Notice to landowners shall include the reason for the change of classification and applicable rules.

(3) Any landowner whose land immediately adjoins the water to be reclassified, any landowner who has received a water right or was granted an easement affecting the water classification, or any state resource agency may request reconsideration of classifications of waters of the state by the State Forester. Such a request shall be in writing and shall identify on a map the portion of the stream or water of the state which should be reconsidered. The request shall present evidence that the current classification is not consistent with OAR 629-635-0200 "Water Classification."

(4) The State Forester shall have up to 14 days to provide a final decision on a request for reconsideration of water classification. Until such a decision is provided, operators shall conduct any operation based upon the most protective potential water classification.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.765 & 919(9)

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2110; DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

629-635-0310

Riparian Management Area Widths for Streams

(1)(a) The riparian management area widths for streams are designated for each stream type as shown in Table 1.

(b) Except as indicated in section (2), operators shall measure the riparian management area width as a slope distance from the high water level of main channels.

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(c) Notwithstanding the distances designated in subsection(1)(a), where wetlands or side channels extend beyond the designated riparian management area widths, operators shall expand the riparian management area as necessary to entirely include any stream-associated wetland or side channel plus at least 25 additional feet. This provision does not apply to small Type N streams.

(2) In situations where the slope immediately adjacent to the stream channel is steep exposed soil, a rock bluff or talus slope, operators shall measure the riparian management area as a horizontal distance until the top of the exposed bank, bluff or talus slope is reached. From that point, the remaining portion of the riparian management area shall be measured as a slope distance.

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

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.710, 527.765 & 919(9)

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2200; DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

629-642-0000

Vegetation Retention Goals for Streams; Desired Future Conditions

(1) The purpose of this rule is to describe how the vegetation retention measures for streams were determined, their purpose and how the measures are implemented. The vegetation retention requirements for streams described in OARs 629-642-0100 through 629-642-0800 are designed to produce desired future conditions for the wide range of stand types, channel conditions, and disturbance regimes that exist throughout forestlands in Oregon.

(2) The desired future condition for streamside areas along fish use streams is to grow and retain vegetation so that, over time, average conditions across the landscape become similar to those of mature streamside stands. Oregon has a tremendous diversity of forest tree species growing along waters of the state and the age of mature streamside stands varies by species. Mature streamside stands are often dominated by conifer trees. For many conifer stands, mature stands occur between 80 and 200 years of stand age. Hardwood stands and some conifer stands may become mature at an earlier age. Mature stands provide ample shade over the channel, an abundance of large woody debris in the channel, channel-influencing root masses along the edge of the high water level, snags, and regular inputs of nutrients through litter fall.

(3) The rule standards for desired future conditions for fish use streams were developed by estimating the conifer basal area for average unmanaged mature streamside stands (at age 120) for each geographic region. This was done by using normal conifer yield tables for the average upland stand in the geographic region, and then adjusting the basal area for the effects of riparian influences on stocking, growth and mortality or by using available streamside stand data for mature stands.

(4) The desired future condition for streamside areas that do not have fish use is to have sufficient streamside vegetation to support the functions and processes that are important to downstream fish use waters and domestic water use and to supplement wildlife habitat across the landscape. Such functions and processes include: maintenance of cool water temperature and other water quality parameters; influences on sediment production and bank stability; additions of nutrients and large conifer organic debris; and provision of snags, cover, and trees for wildlife.

(5) The rule standards for desired future conditions for streams that do not have fish use were developed in a manner similar to that used for fish use streams. In calculating the rule standards, other factors used in developing the desired future condition for large streams without fish use and all medium and small streams included the effects of trees regenerated in the riparian management area during the next rotation and desired levels of instream large woody debris.

(6) For streamside areas where the native tree community would be conifer dominated stands, mature streamside conditions are achieved by retaining a sufficient amount of conifers next to large and medium sized fish use streams at the time of harvest, so that halfway through the next rotation or period between harvest entries, the conifer basal area and density is similar to mature unmanaged conifer stands. In calculating the rule standards, a rotation age of 50 years was assumed for even-aged management and a period between entries of 25 years was assumed for uneven-aged management. The long-term maintenance of streamside conifer stands is likely to require incentives to landowners to manage streamside areas so that conifer reforestation occurs to replace older conifers over time.

(7) Conifer basal area and density targets to produce mature stand conditions over time are outlined in the general vegetation retention prescriptions. In order to ensure compliance with state water quality standards, these rules include requirements to retain all trees within 20 feet and under-

story vegetation within 10 feet of the high water level of specified channels to provide shade.

(8) For streamside areas where the native tree community would be hardwood dominated stands, mature streamside conditions are achieved by retaining sufficient hardwood trees. As early successional species, the long-term maintenance of hardwood streamside stands will in some cases require managed harvest using site specific vegetation retention prescriptions so that reforestation occurs to replace older trees. In order to ensure compliance with state water quality standards, these rules include requirements in the general vegetation retention prescription to retain all trees within 20 feet and understory vegetation within 10 feet of the high water level of specified channels to provide shade.

(9) In many cases the desired future condition for streams can be achieved by applying the general vegetation retention prescriptions, as described in OARs 629-642-0100, 629-642-0105 and 629-642-0400. In other cases, the existing streamside vegetation may be incapable of developing into the future desired conditions in a "timely manner." In this case, the operator can apply an alternative vegetation retention prescription described in OAR 629-642-0600 or develop a site specific vegetation retention prescription described in OAR 629-642-0700. For the purposes of the water protection rules, "in a timely manner" means that the trees within the riparian management area will meet or exceed the applicable basal area target or vegetation retention goal during the period of the next harvest entry that would be normal for the site. This will be 50 years for many sites.

(10) Where the native tree community would be conifer dominant stands, but due to historical events the stand has become dominated by hardwoods, in particular, red alder, disturbance is allowed to produce conditions suitable for the re-establishment of conifer. In this and other situations where the existing streamside vegetation is incapable of developing characteristics of a mature streamside stand in a "timely manner," the desired action is to manipulate the streamside area and woody debris levels at the time of harvest (through an alternative vegetation retention prescription or site specific vegetation retention prescription) to attain such characteristics more quickly.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.765 & 919(9)

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2220; DOF 2-2013, f. 7-11-13, cert. ef. 9-1-13; Renumbered from 629-640-0000, DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

629-642-0100

General Vegetation Retention Prescription for Type F Streams

(1)(a) Operators shall apply the vegetation retention requirements described in this rule to the riparian management areas of Type F streams. Vegetation retention requirements for Type SSBT streams adjacent to harvest type 2 or harvest type 3 units are described in OAR 629-642-0105 and other water protection rules.

(b) Segments of Type F streams that are different sizes within an operation shall not be combined or averaged together when applying the vegetation retention requirements.

(c) Trees left to meet the vegetation retention requirements for one stream type shall not count towards the requirements of another stream type.

(2) Operators shall retain:

(a) All understory vegetation within 10 feet of the high water level;

(b) All trees within 20 feet of the high water level; and

(c) All trees leaning over the channel.

(3) Operators shall retain within riparian management areas and streams all downed wood and snags that are not safety or fire hazards. Snags felled for safety or fire hazard reasons shall be retained where they are felled unless used for stream improvement projects.

(4) Notwithstanding the requirements of section (2) of this rule, vegetation, snags and trees within 20 feet of the high water level of the stream may be felled, moved or harvested as allowed in other rules for road construction, yarding corridors, temporary stream crossings, or for stream improvement.

(5) Operators shall retain at least 40 live conifer trees per 1000 feet along large streams and 30 live conifer trees per 1000 feet along medium streams. This includes trees left to meet the requirements described in section (2) of this rule. Conifers must be at least 11 inches DBH for large streams and 8 inches DBH for medium streams to count toward these requirements.

(6) Operators shall retain trees or snags six inches or greater DBH to meet the following requirements (this includes trees left to meet the requirements of sections (2) and (5) of this rule):

(a) If the live conifer tree basal area in the riparian management area is greater than the standard target shown in Table 2 where the harvest unit

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will be a harvest type 2 or type 3 unit or Table 3 where the harvest unit will be a harvest type 1, partial harvest, or thinning, operators shall retain live conifer trees of sufficient basal area to meet the standard target.

(b) If the live conifer tree basal area in the riparian management area is less than the standard target (as shown in Table 2 where the harvest unit will be a harvest type 2 or type 3 unit, or Table 3 where the harvest unit will be a harvest type 1, partial harvest, or thinning) but greater than one-half the standard target shown in Table 2, operators shall retain all live conifer trees six inches DBH or larger in the riparian management area (up to a maximum of 150 conifers per 1000 feet along large streams, 100 conifers per 1000 feet along medium streams, and 70 conifers per 1000 feet along small streams).

(c) If live conifer tree basal area in the riparian management area is less than one-half the standard target shown in Table 2:

(A) Operators may apply an alternative vegetation retention prescription as described in OAR 629-642-0600 where applicable, or develop a site specific vegetation retention prescription as described in OAR 629-642-0700; or

(B) Operators shall retain all conifers in the riparian management area and all hardwoods within 50 feet of the high water level for large streams, within 30 feet of the high water level for medium streams, and within 20 feet of the high water level for small streams.

(7) In the Coast Range, South Coast, Interior, Western Cascade, and Siskiyou geographic regions, hardwood trees and snags six inches or greater DBH may count toward the basal area requirements in subsection (6)(a) of this rule as follows:

(a) All cottonwood and Oregon ash trees within riparian management areas that are beyond 20 feet of the high water level of large Type F streams, may count toward the basal area requirements.

(b) Up to 10 percent of the basal area requirement may be comprised of sound conifer snags at least 30 feet tall and other large live hardwood trees, except red alder, growing in the riparian management area more than 20 feet from the high water level and at least 24 inches DBH.

(8) In the Eastern Cascade and Blue Mountain geographic regions, hardwood trees, dying or recently dead trees and snags six inches or greater DBH may count toward the basal area requirements in subsection (6)(a) of this rule as follows:

(a) The basal area of retained live hardwood trees may count toward meeting the basal area requirements.

(b) Up to 10 percent of the basal area retained to meet the basal area requirement may be comprised of sound conifer snags at least 30 feet tall.

(c) For small Type F streams, the maximum required live conifer tree basal area that must be retained to meet the standard target is 40 square feet. The remaining basal area required may come from retained snags, dying or recently dead trees, or hardwoods if available within the riparian management area.

(9) Notwithstanding the requirements indicated in this rule, operators may conduct pre-commercial thinning and other release activities to maintain the growth and survival of conifer reforestation within riparian management areas. Such activities shall contribute to and be consistent with enhancing the stand's ability to meet the desired future condition.

(10) When determining the basal area of trees, the operator may use the average basal area for a tree's diameter class, as shown in Table 4, or determine an actual basal area for each tree. The method for determining basal area must be consistent throughout the riparian management area.

(11)(a) For large and medium Type F streams (not including Type SSBT streams), live conifer trees retained in excess of the active management target shown in Table 2 and hardwoods retained beyond 20 feet of the high water level of the stream that otherwise meet the requirements for leave trees may be counted toward requirements for leave trees within harvest type 2 or harvest type 3 units (pursuant to ORS 527.676).

(b) For small Type F streams (not including Type SSBT streams), all retained live trees that otherwise meet the requirements for leave trees may count toward requirements for leave trees within harvest type 2 or harvest type 3 units (pursuant to ORS 527.676).

(12) Trees on islands with ground higher than the high water level may be harvested as follows:

(a) If the harvest unit is solely on an island, operators shall apply all the vegetation retention requirements for a large Type F stream described in this rule to a riparian management area along the high water level of the channels forming the island.

(b) Otherwise, operators shall retain all trees on islands within 20 feet of the high water level of the channels forming the island and all trees leaning over the channels. In this case, conifer trees retained on islands may count toward the basal area requirement for adjacent riparian management

areas so long as the trees are at least 11 inches DBH for large streams and eight inches DBH for medium streams.

(13) When applying the vegetation retention requirements described in this rule to the riparian management areas, if an operator cannot achieve the required retention without leaving live trees on the upland side of a road that may be within the riparian management area and those trees pose a safety hazard to the road and will provide limited functional benefit to the stream, the State Forester may approve a plan for an alternate practice to modify the retention requirements on a site specific basis.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.715 & 527.765

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2230; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06; DOF 7-2006(Temp), f. & cert. ef. 6-27-06 thru 12-23-06; Administrative correction 1-16-07; DOF 2-2013, f. 7-11-13, cert. ef. 9-1-13; Renumbered from 629-640-0100, DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

629-642-0105

General Vegetation Retention Prescriptions for Type SSBT Streams

(1) The purpose for the vegetation retention prescriptions in this section is to ensure that, to the maximum extent practicable, forest operations will not impair the achievement and maintenance of the protecting cold water criterion described in OAR 340-041-0028(11).

(2) The vegetation retention requirements for Type SSBT streams apply to harvest type 2 or harvest type 3 units in the following Geographic Regions as described in OAR 629-635-0220: Coast Range, South Coast, Interior, and Western Cascades. Use rules in OAR 629-642-0100 for Type 1 harvests along SSBT streams.

(3) Operators shall apply the vegetation retention requirements described in this rule to the riparian management area of the following streams:

(a) Type SSBT streams.

(b) The main stem of any Type F stream upstream of the mapped end of SSBT use to the higher of:

(A) The upstream boundary of the harvest unit containing SSBT, or

(B) The upstream boundary of any adjacent upstream harvest unit commenced within a year of completing harvest of the unit containing SSBT.

(c) For the purpose of this rule, "main stem" means the stream with the largest annual average flow at a confluence of two or more streams. The State Forester shall determine average annual flow by indexing average annual flow to the upstream drainage area and average annual precipitation as described in Forest Practices Technical Note 1 dated April 11, 1994. The State Forester may substitute field evaluations of average annual flow for the calculated flows described in the technical note.

(4) Segments of Type SSBT streams that are different sizes within an operation shall not be combined or averaged together when applying the vegetation retention requirements.

(5) Trees left to meet the vegetation retention requirements for one stream type shall not count towards the requirements of another stream type.

(6) Operators shall retain:

(a) All understory vegetation within 10 feet of the high water level;

(b) All trees within 20 feet of the high water level; and

(c) All trees leaning over the channel.

(7) Operators shall retain all downed wood and snags that are not safety or fire hazards within riparian management areas and streams. Snags felled for safety or fire hazard reasons shall be retained where they are felled unless used for stream improvement projects.

(8) Notwithstanding the requirements of section (6) of this rule, vegetation, snags and trees within the riparian management area of the stream may be felled, moved or harvested as allowed in other rules for road construction, yarding corridors, temporary stream crossings, or for stream improvement while maintaining required basal area and live conifer tree count.

(9) When harvesting in the riparian management area of a Type SSBT stream, an operator shall apply one of the following prescriptions, except as noted for Type SSBT Prescription 3 in section (12).

(a) Operators may apply Type SSBT Prescription 1 on any Type SSBT riparian management area as described in section (10) of this rule.

(b) If the basal area of trees six inches or greater DBH within the riparian management area but more than 20 feet from the high water level of the Type SSBT stream exceeds the total basal area target shown in Table 5, the operator may apply Type SSBT Prescription 2, described in section (11) of this rule.

(c) If a Type SSBT stream segment at least 200 feet in length meets the standards in Type SSBT Prescription 3, the operator may apply that pre-

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scription on the north side of the stream segment, as described in section (12) of this rule.

(d) If live conifer basal area within the riparian management area of a Type SSBT stream is less than half the standard target for a small or medium Type F stream in Table 2, the operator may apply the appropriate Alternative Prescription described in OAR 629-642-0600.

(e) For the riparian management area of any Type SSBT stream, the operator may propose a site-specific prescription in a plan for an alternate practice. Plans for alternate practices are subject to the review and approval of the State Forester. Site-specific prescriptions are described in OAR 629-642-0700.

(10) Type SSBT Prescription 1:

(a) Retain all trees within 60 feet of the high water level of a small stream.

(b) Retain all trees within 80 feet of the high water level of a medium stream.

(c) Where SSBT Prescription 1 is applied, operators may count as wildlife leave trees all trees that meet wildlife leave tree requirements:

(A) Within 20 feet of the high water level.

(B) In the remainder of the riparian management area, up to 50 percent of the basal area trees used to meet the basal area target in Table 5.

(C) Any trees within the area described in (B) in excess of the basal area target in Table 5.

(11) Type SSBT Prescription 2:

(a) Operators shall retain trees that are well-distributed by length and width of the riparian management area beyond 20 feet of the high water level of the stream, minimize the creation of large gaps, favor small openings in the canopy, and leave residual trees in a manner that promotes understory as well as diameter and crown growth. Operators shall satisfy these requirements by meeting the following minimum standards:

(A) For small Type SSBT streams, the riparian management area length will be measured in 500-foot segments. Within each 500-foot segment at least 25 percent of the required basal area target, rounded up to the nearest whole number, and 50 percent of the required live conifer trees, rounded up to the nearest whole tree, shall be located between:

(i) 20 feet and 40 feet of the high water level, see Table 5; and

(ii) 40 feet and 60 feet of the high water level, see Table 5.

(B) For medium Type SSBT streams, the riparian management area length will be measured in 500-foot segments. Within each 500-foot segment at least 25 percent of the required basal area target, rounded up to the nearest whole number, and 50 percent of the required live conifer trees, rounded up to the nearest whole tree, shall be located between:

(i) 20 feet and 50 feet of the high water level, see Table 5; and

(ii) 50 feet and 80 feet of the high water level, see Table 5.

(b) For stream segments that are less than 500 feet, the required basal area and live conifer trees are reduced proportionally.

(c) The operator shall provide a description in the written plan and map where the measurement for the 500-foot stream segments begin and end.

(d) Operators shall retain live conifer trees:

(A) For small Type SSBT streams, at least 8 live conifer trees per 500 feet along the stream, located between 20 feet and 60 feet from the high water level. Live conifer trees must be at least 8 inches DBH to count toward these requirements, see Table 5.

(B) For medium Type SSBT streams, at least 15 live conifer trees per 500 feet along the stream, located between 20 feet and 80 feet from the high water level. Live conifer trees must be at least 8 inches DBH to count toward these requirements, see Table 5.

(e) Operators shall retain hardwood and conifer trees and snags six inches or greater DBH to meet the following basal area requirements:

(A) For small Type SSBT streams, conifer and hardwood basal area target is shown in Table 5.

(B) For medium Type SSBT streams, conifer and hardwood basal area target is shown in Table 5.

(C) Up to 10 percent of the basal area requirements may be comprised of sound conifer snags at least 30 feet tall.

(f) Where Type SSBT Prescription 2 is applied, operators may count as wildlife leave trees all trees that meet wildlife leave tree requirements:

(A) Within 20 feet of the high water level.

(B) In the remainder of the riparian management area, up to 50 percent of the basal area trees retained to meet the basal area target in Table 5.

(C) Any trees within the area described in (B) in excess of the basal area target in Table 5.

(12) Type SSBT Prescription 3:

(a) This prescription applies to Type SSBT streams where the stream valley direction is between 60 and 120 degrees east and 240 and 300 degrees west on a compass bearing of 0 and 360 degrees as north. Operators shall:

(A) Retain all trees within 40 feet of the high water level on the north side of a Type SSBT stream where the stream valley direction criteria are met.

(B) The operator shall describe in a written plan and map where the alternative prescription is intended to be implemented.

(b) Where Type SSBT Prescription 3 is not applied, the operator shall apply either Type SSBT Prescription 1 or 2.

(c) The State Forester shall maintain a map showing stream valley direction for applying Type SSBT Prescription 3.

(d) The State Forester may substitute field evaluations of stream valley direction instead of the map.

(A) The field-based evaluation shall measure the stream valley direction with a minimum of 200-foot stream segments.

(B) The stream segment must meet the stream valley direction criteria listed above to apply SSBT Prescription 3.

(e) Where Type SSBT Prescription 3 is applied, operators may count all trees that meet the wildlife leave tree requirements retained within 40 feet of the high water level as wildlife leave trees.

(13) Notwithstanding the requirements indicated in this rule, operators may conduct pre-commercial thinning and other release activities to maintain the growth and survival of conifer reforestation within riparian management areas. Such activities shall contribute to and be consistent with enhancing the stand's ability to meet the desired future condition.

(14) When determining the basal area of trees, the operator may use the average basal area for a tree's diameter class, as shown in Table 4, or determine an actual basal area for each tree. The method for determining basal area must be consistent throughout the riparian management area.

(15) When applying the vegetation retention requirements described in this rule to the riparian management areas, if an operator cannot achieve the required retention without leaving live trees on the upland side of a road that may be within the riparian management area and those trees pose a safety hazard to the road and will provide limited functional benefit to the stream, the State Forester may approve a plan for an alternate practice to modify the retention requirements on a site specific basis.

Stat. Auth.: ORS 527.710, 527.630(3), 527.714, 526.016(4)

Stats. Implemented: ORS 527.630(5), 527.674, 527.714, 527.715, 527.765, 527.710, 527.919(9)

Hist.: DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

629-642-0110

Relief for General Vegetation Retention Prescriptions for Type SSBT Streams

(1) Upon written request from a landowner, relief is available if the additional encumbered forested stream area due to Type SSBT classification is 8% or more of the forested portion of any parcel. The additional encumbered forested stream area is measured by the increase in acres of the Type SSBT vegetation prescription over the vegetation prescription for Type F streams. To determine the additional percentage forested stream area encumbered, the increase in acres is divided by the forested parcel acres.

(2) "Parcel" as described in this section means a contiguous single ownership recorded at the register of deeds within the county or counties where the property is located, including any parcel(s) touching along a boundary, but a railroad, road, stream, or utility-right-of-way may intersect the parcel. Single ownership is defined in ORS 527.620(14).

(3) If a landowner qualifies for relief, the landowner may utilize:

(a) Type SSBT Relief Prescription 1 which is Type SSBT Prescription 1, as described in OAR 629-642-0105(10), within a reduced riparian management area of 50 feet or 70 feet for small and medium Type SSBT streams, respectively; or

(b) Type SSBT Relief Prescription 2 which is Type SSBT Prescription 2, as described in OAR 629-642-0105(11), within a reduced riparian management area of 50 feet or 70 feet for small and medium Type SSBT streams, respectively. See Table 6 for reduced basal area targets and live conifer tree requirements.

(4) Type SSBT Relief Prescription 1:

(a) Retain all trees within 50 feet of the high water level of a small stream.

(b) Retain all trees within 70 feet of the high water level of a medium stream.

ADMINISTRATIVE RULES

(c) Where Type SSBT Relief Prescription 1 is applied, operators may count as wildlife leave trees all trees that meet wildlife leave tree requirements:

(A) Within 20 feet of the high water level.

(B) In the remainder of the riparian management area, up to 50 percent of the basal area trees used to meet the basal area target in Table 6.

(C) Any trees within the area described in (B) in excess of the basal area target in Table 6.

(5) Type SSBT Relief Prescription 2:

(a) Operators shall retain trees that are well-distributed by length and width of the riparian management area beyond 20 feet of the high water level of the stream, minimize the creation of large gaps, favor small openings in the canopy, and leave residual trees in a manner that promotes understory as well as diameter and crown growth. Operators shall satisfy these requirements by meeting the following minimum standards:

(A) For small Type SSBT streams, the riparian management area length will be measured in 500-foot segments. Within each 500-foot segment at least 25 percent of the required basal area target, rounded up to the nearest whole number, and 50 percent of the required live conifer trees, rounded up to the nearest whole tree, shall be located between:

(i) 20 feet and 35 feet of the high water level, see Table 6; and

(ii) 35 feet and 50 feet of the high water level, see Table 6.

(B) For medium Type SSBT streams, the riparian management area length will be measured in 500-foot segments. Within each 500-foot segment at least 25 percent of the required basal area target, rounded up to the nearest whole number, and 50 percent of the required live conifer trees, rounded up to the nearest whole tree, shall be located between:

(i) 20 feet and 45 feet of the high water level, see Table 6; and

(ii) 45 feet and 70 feet of the high water level, see Table 6.

(b) For stream segments that are less than 500 feet, the required basal area and live conifer trees are reduced proportionally.

(c) The operator shall provide a description in the written plan and map where the measurement for the 500-foot stream segments begin and end.

(d) Operators shall retain live conifer trees:

(A) For small Type SSBT streams, at least 6 live conifer trees per 500 feet along the stream, located between 20 feet and 50 feet from the high water level. Live conifer trees must be at least 8 inches DBH to count toward these requirements, see Table 6.

(B) For medium Type SSBT streams, at least 13 live conifer trees per 500 feet along the stream, located between 20 feet and 70 feet from the high water level. Live conifer trees must be at least 8 inches DBH to count toward these requirements, see Table 6.

(e) Operators shall retain hardwood and conifer trees and snags six inches or greater DBH to meet the following basal area requirements:

(A) For small Type SSBT streams, conifer and hardwood basal area target is shown in Table 6.

(B) For medium Type SSBT streams, conifer and hardwood basal area target is shown in Table 6.

(C) Up to 10 percent of the basal area requirements may be comprised of sound conifer snags at least 30 feet tall.

(f) Where Type SSBT Relief Prescription 2 is applied, operators may count as wildlife leave trees all trees that meet wildlife leave tree requirements:

(A) Within 20 feet of the high water level.

(B) In the remainder of the riparian management area, up to 50 percent of the basal area trees retained to meet the basal area target in Table 6.

(C) Any trees within the area described in (B) in excess of the basal area target in Table 6.

(6) The State Forester will identify those parcels that potentially qualify for relief.

(7) The State Forester will make the final determination on whether a parcel qualifies for relief.

Stat. Auth.: ORS 527.710, 527.630(3), 527.714, 526.016(4)

Stats. Implemented: ORS 527.630(5), 527.674, 527.714, 527.715, 527.765, 527.710, 527.919(9)

Hist.: DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

629-642-0200

Placing Large Wood Key Pieces in Type F or Type SSBT Streams to Improve Fish Habitat

(1) Placement of large wood key pieces in a Type F or Type SSBT stream to improve fish habitat that is conducted in conjunction with a forest operation is subject to the regulations in the Oregon Forest Practices Act and the forest practice rules.

(2) The goal of placing large wood key pieces is to deliver wood that is relatively stable, but can reconfigure to a limited degree and work with the natural stream flow to restore and maintain habitat for aquatic species. When placing large wood key pieces in conjunction with an operation, an operator shall design and implement the project to:

(a) Rely on the size of wood for stability and exclude the use of any type of artificial anchoring;

(b) Emulate large wood delivery configurations that occur from natural riparian processes over time;

(c) Restore and maintain natural aquatic habitat over time rather than rely on constructed habitat structures; and

(d) Meet the standards established in "Guide to Placement of Wood, Boulders and Gravel for Habitat Restoration," developed by the Oregon Department of Forestry, Oregon Department of Fish and Wildlife, Oregon Department of State Lands, and Oregon Watershed Enhancement Board, January 2010.

Stat. Auth.: ORS 527.710(1)

Stats. Implemented: ORS 527.765, 527.674, 527.714 & 527.715

Hist.: DOF 1-2007, f. & cert. ef. 1-8-07; DOF 2-2013, f. 7-11-13, cert. ef. 9-1-13;

Renumbered from 629-640-0105, DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

629-642-0300

Live Tree Retention Credit for Improvement of Type F and Type SSBT Streams

(1) Many Type F and Type SSBT streams currently need improvement of fish habitat because they lack adequate amounts of large woody debris in channels, or they lack other important habitat elements.

(2) This rule allows operators incentives to conduct other stream enhancement projects to create immediate improvements in fish habitat. Operators placing large wood key pieces in streams, as described in OAR 629-642-0200, may qualify for the live tree retention credit for Type F or Type SSBT streams under this rule only if such placement meets the additional requirements of this rule.

(3) When addressed in a written plan, operators may place conifer logs or downed trees in Type F or Type SSBT streams and receive basal area credit toward meeting the live tree retention requirements in a stream's riparian management area.

(4) For each conifer log or tree the operator places in a large or medium Type F stream (except Type SSBT streams), the basal area credit is twice the basal area of the placed log or tree.

(5) For each conifer log or tree the operator places in a small Type F stream, or small or medium Type SSBT stream, the basal area credit is equal to the basal area of the placed log or tree.

(6) Basal area credit will be determined by measuring the cross-sectional area of the large end of a log or by measuring the point on a downed tree that would be equivalent to breast height.

(7) To receive basal area credit for downed trees or conifer logs placed in a stream, the operator shall comply with the guidance and restrictions for placing logs or trees prescribed by the State Forester.

(8) Operators may propose other stream enhancement projects for basal area credit such as creation of backwater alcoves, riparian grazing enclosures (such as fencing), and placement of other instream structure such as boulders and rootwads. When a project is addressed in a written plan and reviewed by the State Forester in consultation with the Department of Fish and Wildlife, basal area credit shall be given toward meeting the live tree requirements within riparian management areas. The basal area credit shall be negotiated between the State Forester, operator and Department of Fish and Wildlife.

(9) Basal area credit may be given to an operation for enhancement projects conducted at locations other than at the operation site so long as the project is in the same immediate vicinity as the operation site (for instance, within one or two miles of the operation).

(10) Basal area credit may be given to an operation for improvement projects conducted at a later date (this may be necessary to avoid operating under high water conditions or to protect spawning areas), but the project must be completed within six months of the completion of the operation.

(11) In granting basal area credit, the standing tree basal area retained within riparian management areas of Type F streams shall not be reduced to less than the active management targets for Type F streams shown in Table 2 or 3, as applicable.

(12) For small Type F streams in the Eastern Cascade and Blue Mountain geographic regions, the live conifer tree basal area may be reduced to 30 square feet for the active management target. The remaining portion of the basal area requirement must come from snags, dying or recently dead or dying trees, or hardwood trees if available in the riparian management area.

ADMINISTRATIVE RULES

(13) Operators shall notify the State Forester of the completion of live tree retention credit stream improvement projects that were planned for locations other than on the operation site under section (9) of this rule or that were planned to be completed at another date under section (10) of this rule.

Stat. Auth.: ORS 527.710(1)
Stats. Implemented: ORS 527.674, 527.715 & 527.765
Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2240; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06; DOF 1-2007, f. & cert. ef. 1-8-07; Renumbered from 629-640-0110, DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

629-642-0400

General Vegetation Retention Prescription for Type D and Type N Streams

(1)(a) Operators shall apply the vegetation retention requirements described in this rule to the riparian management areas of Type D and Type N streams.

(b) Segments of Type D or Type N streams that may be of a different size within an operation shall not be combined or averaged together when applying the vegetation retention requirements.

(c) Trees left to meet the vegetation retention requirements for one stream type shall not count toward the requirements of another stream type.

(2) Operators shall retain along all Type D, and large and medium Type N streams:

- (a) All understory vegetation within 10 feet of the high water level;
- (b) All trees within 20 feet of the high water level; and
- (c) All trees leaning over the channel.

(3) Operators shall retain all downed wood and snags that are not safety or fire hazards within riparian management areas and streams. Snags felled for safety or fire hazard reasons shall be retained where they are felled unless used for stream improvement projects.

(4) Notwithstanding the requirements of section (2), vegetation, snags and trees within 20 feet of the high water level of the stream may be felled, moved or harvested as allowed in the rules for road construction, yarding corridors, temporary stream crossings, or for stream improvement.

(5) Operators shall retain at least 30 live conifer trees per 1000 feet along large Type D and Type N streams and 10 live conifer trees per 1000 feet along medium Type D and Type N streams. This includes any trees left to meet the requirements described in section (2) of this rule. Conifers must be at least 11 inches DBH for large streams and eight inches DBH for medium streams to count toward these requirements.

(6) Operators shall retain all understory vegetation and non-merchantable conifer trees (conifer trees less than six inches DBH) within 10 feet of the high water level on each side of small perennial Type N streams indicated in Table 7.

(a) The determination that a stream is perennial shall be made by the State Forester based on a reasonable expectation that the stream will have summer surface flow after July 15.

(b) The determination in subsection (6)(a) of this rule can be made based on a site inspection, data from other sources such as landowner information, or by applying judgment based upon stream flow patterns experienced in the general area.

(c) Operators are encouraged whenever possible to retain understory vegetation, non-merchantable trees, and leave trees required within harvest type 2 or harvest type 3 units (pursuant to ORS 527.676) along all other small Type N streams within harvest units.

(7) Operators shall retain trees six inches or greater DBH to meet the following requirements (this includes trees left to meet the requirements of sections (2) and (5) of this rule):

(a) If the live conifer tree basal area in the riparian management area is greater than the standard target shown in Table 8 where the harvest will be a harvest type 2 or type 3 unit or in Table 9 where the harvest unit is a harvest type 1, partial harvest, or thinning, operators shall retain along all Type D, and medium and large Type N streams live conifer trees of sufficient basal area to meet the standard target.

(b) If the live conifer tree basal area in the riparian management area is less than the standard target (as shown in Table 8 where the harvest will be a harvest type 2 or type 3 unit or Table 9 where the harvest unit is a harvest type 1, partial harvest, or thinning), but greater than one-half the standard target shown in Table 8, operators shall retain along all Type D, and medium and large Type N streams all conifers 6 inches DBH or larger in the riparian management area (up to a maximum of 100 conifers per 1000 feet along large streams, and 70 conifers per 1000 feet along medium streams).

(c) If the live conifer tree basal area in the riparian management area is less than one-half the standard target shown in Table 8:

(A) Operators may apply an alternative vegetation retention prescription as described in OAR 629-642-0600, where applicable, or develop a site specific vegetation retention prescription as described in OAR 629-642-0700; or

(B) Operators shall retain along all Type D, and medium and large Type N streams all conifers in the riparian management area and all hardwoods within 30 feet of the high water level for large streams and within 20 feet of the high water level for medium streams.

(8) In the Coast Range, South Coast, Interior, Western Cascade, and Siskiyou geographic regions, hardwood trees and snags six inches or greater DBH may count toward the basal area requirements in subsection (7)(a) of this rule as follows:

(a) All cottonwood and Oregon ash trees within riparian management areas that are beyond 20 feet of the high water level of large Type D and N streams, may count toward the basal area requirements.

(b) For large Type D and N streams, up to 10 percent of the basal area requirement may be comprised of sound conifer snags at least 30 feet tall and other large live hardwood trees, except red alder, growing in the riparian management area more than 20 feet from the high water level and at least 24 inches DBH.

(c) For medium Type D and N streams:

(A) Up to 30 square feet of basal area per 1000 feet of stream may be comprised of hardwood trees.

(B) Up to five percent of the basal area retained may be comprised of sound conifer snags that are at least 30 feet tall.

(9) In the Eastern Cascade and Blue Mountain geographic regions:

(a) The basal area of all retained live hardwood trees may count toward meeting the basal area requirements.

(b) For large Type D and N streams, up to 10 percent of the basal area requirement may be comprised of sound conifer snags at least 30 feet tall.

(c) For medium Type D and N streams, up to five percent of the basal area retained may be comprised of sound conifer snags that are at least 30 feet tall.

(10) Notwithstanding the requirements indicated in this rule, operators may conduct precommercial thinning and other release activities to maintain the growth and survival of conifer reforestation within riparian management areas. Such activities shall contribute to and be consistent with enhancing the stand's ability to meet the desired future condition.

(11) When determining the basal area of trees along streams in a harvest unit, operators may use the average basal area for a tree's diameter class, as shown in Table 4 in OAR 629-642-0100, or determine an actual basal area for each tree. The method for determining basal area must be consistent throughout the riparian management area.

(12) All live trees retained along Type D and N streams that otherwise meet the requirements for leave trees may count toward requirements for leave trees within harvest type 2 or harvest type 3 units (pursuant to ORS 527.676).

(13) Trees on islands with ground higher than the high water level may be harvested as follows:

(a) If the harvest unit is solely on an island, operators shall apply all the vegetation retention requirements for a large Type F stream described in this rule to a riparian management area along the high water level of the channels forming the island.

(b) Otherwise, operators shall retain all trees on islands within 20 feet of the high water level of the channels forming the island and all trees leaning over the channels. In this case, conifer trees retained on islands may count toward the basal area requirement for adjacent riparian management areas so long as the trees are at least 11 inches DBH for large streams and 8 inches DBH for medium streams.

(c) All merchantable trees may be harvested from islands within small Type N streams.

(14) When applying the vegetation retention requirements described in this rule to the riparian management areas, if an operator cannot achieve the required retention without leaving live trees on the upland side of a road that may be within the riparian management area and those trees pose a safety hazard to the road and will provide limited functional benefit to the stream, the operator may submit a plan for an alternate practice to the State Forester to modify the retention requirements on a site specific basis.

Stat. Auth.: ORS 527
Stats. Implemented: ORS 527.674, 527.715 & 527.765
Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2250; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06; DOF 2-2013, f. 7-11-13, cert. ef. 9-1-13; Renumbered from 629-640-0200, DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

ADMINISTRATIVE RULES

629-642-0500

Leaving Green Trees and Snags along Small Type N Streams subject to Rapidly Moving Landslides

(1) The purpose of this rule is to provide a source of large wood that can be moved by rapidly moving landslides into Type F or Type SSBT streams.

(2) When directed by the State Forester, operators must retain green trees and snags required for harvest type 2 or type 3 units under ORS 527.676 adjacent to small Type N streams subject to rapidly moving landslides likely to deliver wood to Type F or Type SSBT streams.

(a) The green trees and snags must be retained within an area that is 50 feet on each side of the small Type N stream and 500 feet upstream from a riparian management area of a Type F or Type SSBT stream.

(b) Requirements under OAR 629-623-0300 supersede the requirements of this rule.

(3) Operators are required to retain all green trees and snags in the area described in subsection (2)(a) of this rule up to the number determined by the equation $H - T$ where:

(a) H is the total number of green trees and snags required to be retained in the harvest type 2 or type 3 unit; and

(b) T is the number of trees retained in riparian management areas in the harvest unit that may be counted as harvest unit leave trees under OARs 629-642-0100(11) and 629-642-0400(12).

(4) An operator may propose a plan for an alternate practice to meet the purpose of this rule. Alternate practices may include but are not limited to placing wood directly in the Type F or Type SSBT stream.

(5) This rule takes effect on October 1, 2007.

Stat. Auth.: ORS 527.710 Other Auth. 527.630(3), 527.714, 526.016(4)

Stats. Implemented: ORS 527.676(3)(d), 527.715, 527.765

Hist.: DOF 10-2006, f. 10-31-06, cert. ef. 10-1-07; Renumbered from 629-640-0210, DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

629-642-0600

Alternative Vegetation Retention Prescriptions

(1) Alternative prescriptions are intended to apply to situations where the existing streamside stand is too sparse or contains too few live conifers to maintain fish, wildlife, and water quality resources over time. Future desired streamside stand conditions are achieved through immediate manipulation of vegetation, including reforestation of the riparian management area with conifers.

(2) Sections (3) and (4) of this rule are alternative vegetation retention prescriptions that operators may apply if the conifer basal area in the riparian management area is no more than one-half of the standard target indicated in either Table 2 of OAR 629-642-0100 or Table 8 of OAR 629-642-0400, as may be applicable, and conditions described in the alternative prescription are applicable.

(3) Alternative Vegetation Retention Prescription 1 (Catastrophic Events). This alternative prescription applies to streamside stands that have been damaged by wildfire or by catastrophic windthrow, insect or disease mortality. Such mortality must occur at the stand level and shall not include normal endemic mortality. The prescription is intended to provide adequate stream shade, woody debris, and bank stability for the future while creating conditions in the streamside area that will result in quick establishment of a new and healthy stand. Operators shall:

(a) Retain trees that have fallen in the stream. Only portions of these trees that are outside the high water levels and do not contribute to the ability of the downed tree to withstand movement during high flows may be harvested.

(b) Retain all live and dead trees within 20 feet of the high water level of large and medium streams and 10 feet of the high water level of small streams.

(c) For Type F streams, retain live trees, dying or recently dead trees, and downed logs sufficient to satisfy the active management target shown in Table 2.

(d) For Type D and N streams, retain live trees, dying or recently dead trees, or downed logs sufficient to satisfy the standard target shown in Table 8.

(e) Live conifers shall be retained first to meet the target. If live conifers are too few to satisfy the target, then the target shall be met as much as possible by including windthrown trees within the channel and dying or recently dead trees.

(f) For purposes of this prescription the basal area of a windthrown tree in the channel or a retained dying or recently dead tree contributes two times its basal area toward meeting the target.

(4) Alternative Vegetation Retention Prescription 2 (Hardwood Dominated Sites). This alternative prescription applies to streamside sites

that are capable of growing conifers, and where conifer stocking is currently low and unlikely to improve in a "timely manner" because of competition from hardwoods and brush. If portions of such riparian management areas currently contain abundant conifer basal area, it is intended that these areas of good conifer basal area be segregated and managed using the general vegetation retention prescription while the remainder is managed according to this alternative prescription. The alternative prescription is intended to provide adequate stream shade, some woody debris, and bank stability for the future while creating conditions in the streamside area that will result in quick establishment of a conifer stand. The operator shall:

(a) Evaluate the stand within the riparian management area and, where they exist, segregate segments (200 feet or more in length) that are well-stocked with conifer, as identified from an aerial photograph, from the ground or through other appropriate means. The general vegetation retention prescription for vegetation retention shall be applied to these segments.

(b) For the remaining portion of the riparian management area that has lower conifer basal area, the riparian management area shall be divided into conversion blocks and retention blocks.

(c) No more than half of the total stream length in the harvest unit can be included within conversion blocks. Conversion blocks can be no more than 500 feet long and must be separated from each other by at least 200 feet of retention block or by at least a 200-foot segment where the general vegetation retention prescription is applied.

(d) Within conversion blocks the operator shall retain:

(A) All trees growing in the stream or within 10 feet of the high water level of the stream.

(B) All trees leaning over the channel within 20 feet of the high water level of large streams.

(e) Within retention blocks the operator shall retain:

(A) For large streams, all conifer trees within 50 feet of the high water level of the stream and all hardwood trees within 30 feet of the high water level of the stream.

(B) For medium streams, all conifer trees within 30 feet of the high water level of the stream and all hardwood trees within 20 feet of the high water level of the stream.

(C) For small streams, all trees within 20 feet of the high water level of the stream.

Stat. Auth.: ORS 527.710

Stats. Implemented: ORS 527.710, 527.765 & 919(9)

Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94. Renumbered from 629-057-2260; Renumbered from 629-640-0300, DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

629-642-0700

Site Specific Vegetation Retention Prescriptions for Streams and Riparian Management Areas

(1)(a) Operators are encouraged to develop site specific vegetation retention prescriptions in a plan for an alternate practice.

(b) A primary aim of these prescriptions is to identify opportunities and allow incentives for restoring or enhancing riparian management areas or streams.

(c) Another purpose of site specific vegetation retention prescriptions is to allow for changes to the vegetation retention requirements in OARs 629-642-0100, 629-642-0105 and 629-642-0400. The changes must provide for the functions and values of streams and their riparian management areas as described in the vegetation retention goals for streams while affording a better opportunity to meet other objectives.

(2) Operators may develop site specific vegetation retention prescriptions for streams and their riparian management areas to achieve the vegetation retention goals described in OAR 629-642-0000 if:

(a) The potential of the streamside stand to achieve basal area and stand density similar to mature conifer forest stands in a "timely manner" is questionable; or

(b) In-stream conditions are impaired due to inadequate large woody debris or other factors; or

(c) The modification of a standard or practice would result in less environmental damage than if the standard or practice were applied.

(3) A plan for an alternate practice shall be approved if the State Forester determines that when properly executed the alternate plan will have no significant or permanent adverse effects and:

(a) It will meet or exceed the vegetation retention goals in a more "timely manner" than if the plan were not implemented; or

(b) The long-term benefits of the proposed restoration practice are greater than short-term detrimental effects; or

(c) The proposed practice will result in less environmental damage than if the regular rules were followed.

ADMINISTRATIVE RULES

(4) Factors that may need to be considered in the plan include, but are not limited to, the potential of the existing streamside stand to achieve mature conifer forest characteristics, the long-term supply of woody debris, survival of planted conifers, sensitivity to changes in water temperature and water quality, the potential for sedimentation, the stability of woody debris placed in aquatic areas, and monitoring the direct effects of the proposed practices.

Stat. Auth.: ORS 527.710
Stats. Implemented: ORS 527.674, 527.710, 527.765 & 919(9)
Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2270; DOF 6-2005(Temp), f. & cert. ef. 8-2-05 thru 1-27-06; DOF 8-2005, f. 12-13-05, cert. ef. 1-1-06; Renumbered from 629-640-0400, DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

629-642-0800

Reforestation within Stream Riparian Management Areas

Harvested portions of riparian management areas along streams are subject to the same reforestation requirements that apply to adjacent areas outside of the riparian management areas. Reforestation is more difficult in riparian management areas due to a number of factors. To succeed with the required reforestation, land-owners should anticipate and plan for such factors as brush control measures, animal damage problems, and tree species that are suitable for wetter sites.

Stat. Auth.: ORS 527.710
Stats. Implemented: ORS 527.674, 527.710, 527.765 & 919(9)
Hist.: FB 3-1994, f. 6-15-94, cert. ef. 9-1-94, Renumbered from 629-057-2280; Renumbered from 629-640-0500, DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

629-680-0020

Resource Site Defined for the Purpose of a Hearing

(1) Notwithstanding OAR 629-600-0100(62), 629-665-0110(1), 629-665-0120(1), 629-665-0220(1), 629-665-0230(1), and 629-665-0240(1), key components are not considered a part of the resource site in determining the place from which distances are measured for the purpose of requesting a hearing under ORS 527.670(4) and 527.700(3).

(2) For threatened or endangered bird species, the place from which such distances are measured is the active nest tree, roost trees, or foraging perch.

(3) For birds which use sensitive bird nesting, roosting or watering sites, the place from which such distances are measured is the specific nest tree, roosting tree or watering place.

(4) For significant wetland types identified in OAR 629-680-0310, the place from which such distances are measured is the significant wetland boundary as determined by the State Forester.

(5) For other sites protected under ORS 527.710(3)(a), the place will be defined by rule as rules are adopted to protect the sites.

Stat. Auth.: ORS 527.710
Stats. Implemented: ORS 527.715
Hist.: FB 4-1990, f. & cert. ef. 7-25-90; FB 3-1991, f. & cert. ef. 5-23-91; FB 8-1991, f. & cert. ef. 10-30-91; FB 9-1996, f. 12-2-96, cert. ef. 1-1-97, Renumbered from 629-056-0900; DOF 2-2013, f. 7-11-13, cert. ef. 9-1-13; DOF 1-2017, f. 6-9-17, cert. ef. 7-1-17

Rule Caption: Amends Fire Prevention Rules and Requirements for Industrial Operations.

Adm. Order No.: DOF 2-2017

Filed with Sec. of State: 6-9-2017

Certified to be Effective: 7-1-17

Notice Publication Date: 4-1-2017

Rules Amended: 629-041-0005, 629-043-0005, 629-043-0015, 629-043-0020, 629-043-0025, 629-043-0026, 629-043-0030, 629-043-0036, 629-043-0040

Rules Ren. & Amend: 629-043-0010 to 629-043-0023

Subject: The rule revisions reflect clarification, updates and changes to fire prevention rules and requirements for industrial operations based on changing technology and logging practices. The rules also address inconsistencies and brings into alignment similar rules in other

chapters. The rules increase requirements in some areas, while reducing requirements in other areas. Rules include changes to water supply and delivery, fire tools and extinguishers, Watchman (Fire-watch) Service, operation area prevention, and power saws.

Rules Coordinator: Sabrina Perez—(503) 945-7210

629-041-0005

Definitions

(1) The definitions set forth in ORS 477.001 apply to OAR chapter 629, divisions 041 through 046, unless the context otherwise requires.

(2) The following words and phrases, when used in OAR chapter 629, divisions 041 through 043, are defined as follows, unless the context otherwise requires:

(a) "All-terrain vehicle" means a Class I all-terrain vehicle, as defined in ORS 801.190.

(b) "Block" means a pulley or system of pulleys set in a casing which guides a moving line.

(c) "Budget" means the budgeted cost of the Forester for a forest protection district, which cost has been determined under the authority and procedures of ORS 477.205 to 477.281;

(d) "Close down requirements" means the machinery operation restrictions specified by the forester in the Industrial Fire Precaution Level (IFPL) system.

(e) "Good operating condition" means fully ready for intended use, maintained in accordance with any manufacturer's recommendations and, where appropriate, properly installed and free of leaks.

(f) "Fully turbo-charged" means all exhaust gases pass through a turbine wheel which is turning at all times and where there is no exhaust bypass to the atmosphere.

(g) "Heavy truck" means a truck which has a gross vehicle weight rating of 26,001 pounds or more.

(h) "Immediate use" means:

(A) In good operating condition;

(B) Requires the addition of no components, fuel, oil, parts or water to be made operational; and

(C) Maintained in a known location which is easily and rapidly accessible by the operator.

(i) "Improved road" means a road maintained for the use of motor vehicles and that is sufficiently clear of flammable material to prevent the spread of wildfire to adjacent vegetation.

(j) "Landing" means any designated place where logs are laid after being yarded, and are awaiting subsequent handling, loading and hauling.

(k) "Light truck" means a truck which has a gross vehicle weight rating of 26,000 pounds or less.

(l) "Mobile equipment" means any power driven machinery that moves about under its own power in an operation area, but not including motor vehicles or stationary equipment as defined below;

(m) "Motor vehicle" means any vehicle that is self-propelled and which was built to transport persons or property primarily on improved roads, including buses, cars, recreational vehicles and trucks, except motorcycles and all-terrain vehicles;

(n) "Motorcycle" has the same meaning as defined by ORS 801.365.

(o) "Moving lines" means mainlines and haulback lines used in a cable logging operation.

(p) "Muffler" means an exhaust system device in good operating condition which is designed to reduce noise emission and which contains an internal baffle system.

(q) "Nationally recognized testing laboratory" has the same meaning as defined by OAR 437-002-0005 and 29 CFR 1910.7.

(r) "Power driven machinery" means any machinery, powered by or containing an internal combustion engine, used to conduct an operation.

(s) "Power saw" means a hand held saw powered by an internal combustion engine.

(t) "Prior approval" means written approval of the forester given for a specific plan before the operation begins, with the exception that verbal permission may be granted followed by immediate written confirmation where timing is critical.

(u) "Snag" means a tree which is dead but still standing, and that has lost its leaves or needles and its small limbs.

(v) "Spark arrester" means an exhaust system device which traps or pulverizes exhaust carbon particles to a size below 0.023 inches in diameter before they are expelled from an exhaust system. Mufflers are not spark arresters.

(w) "Stationary equipment" means any power driven machinery, except power saws, which is, has, or will be, operated exclusively at one location in an operation area for a period of more than two days.

(x) "Truck" means a motor vehicle designed primarily for carrying loads other than passengers.

(y) "Written order" means a prior written approval or written requirement, from the forester, for a specified practice.

Stat. Auth.: ORS 526.016 & 526.041

Stats. Implemented: ORS 477

Hist.: FB 17, f. & ef. 3-12-68; FB 18, f. & ef. 3-22-68; FB 7-1986, f. & ef. 9-25-86; DOF 9-1998, f. & cert. ef. 6-3-98; DOF 2-2017, f. 6-9-17, cert. ef. 7-1-17

ADMINISTRATIVE RULES

629-043-0005

Snag Falling

(1) Pursuant to ORS 477.565(1):
(a) Operators must fell all snags which, in the judgment of the forester, constitute a fire hazard, when directed by the forester in written order.

(b) The forester may only require the felling of snags which:

- (A) Are necessary to prevent the spread of fire; and
- (B) Are over 15 feet in height and within 100 feet distance of a land-

ing.

(2) Pursuant to ORS 477.565(2):

(a) Operators must fell all snags which, in the judgment of the forester, constitute a fire hazard, when directed by the forester in written order.

(b) The forester may only require the felling of snags which are:

(A) Necessary to prevent the spread of fire on forestland west of the summit of the Cascade Mountains; and

(B) Over 15 feet in height and over 12 inches in diameter.

(3) The forester must:

(a) When determining whether snags constitute a fire hazard, give due consideration to:

(A) The topography of the operation area;

(B) The number and location of snags in and near the operation area;

and

(C) The frequency of lightning in the operation area;

(b) When issuing written orders, specify if the felling of snags is to be completed before or concurrent with the operation of power driven machinery (other than power saws);

(4) The forester may, in written order, require additional snags in an operation area to be felled if, in the judgment of the forester, conditions so warrant.

Stat. Auth.: ORS 477.565

Stats. Implemented: ORS 477.565

Hist.: FB 17, f. & ef. 5-12-68; FB 8-1986, f. & ef. 9-25-86; DOF 9-1998, f. & cert. ef. 6-3-98; DOF 2-2017, f. 6-9-17, cert. ef. 7-1-17

629-043-0015

Spark Arresters

(1) Pursuant to ORS 477.645, any persons operating an internal combustion engine during fire season, on, or within one-eighth of one mile of a forest protection district, must equip and maintain the engine with a spark arrester, which is;

(a) In good operating condition, and

(b) Listed in the most recent edition of a publication of the National Wildfire Coordinating Group and the U.S.D.A. Forest Service, entitled "Spark Arrester Guide".

(2) The following are exempt from the requirements of section (1) of this rule:

(a) Fully turbo-charged engines which are maintained in good operating condition;

(b) Engines in motor vehicles operating on improved roads which are equipped with a muffler and an exhaust system;

(c) Engines in light trucks which are equipped with a muffler and an exhaust system;

(d) Engines in heavy trucks which are equipped with a muffler and an exhaust system which:

(A) Extends at least to the end of the truck frame and discharges to the rear; or

(B) Extends above the cab of the truck and discharges upward or to the rear.

(e) Engines of 50 cubic inch displacement or less which are equipped with a muffler and an exhaust system;

(f) Water pumping equipment used exclusively for fighting fire.

(3) Engines in all-terrain vehicles and motorcycles are exempt from section (1) of this rule if equipped with:

(a) A muffler and an exhaust system; or

(b) A screen which completely encloses exhaust system openings and which is:

(A) Heat and corrosion resistant; and

(B) Which has no openings greater than .023 inch diameter.

(4) Power saws are exempt from this rule, but are separately regulated by OAR 629-043-0036.

(5) All exhaust systems, mufflers and screens referred to in this rule must be kept in good operating condition.

(6) The forester may, in written order, reduce or waive any requirement of this rule if, in the judgment of the forester, conditions so warrant.

NOTE: Use of any of the above mentioned equipment may be further regulated or prohibited during fire season through the application of industrial or regulated use closures (ORS 477.535-.550)

[Publications: The publication(s) referred to are available at:

https://www.fs.fed.us/t-d/programs/fire/spark_arrester_guides/]

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 477.645

Stats. Implemented: ORS 477.645

Hist.: FB 17, f. & ef. 5-12-68; FB 28, f. 2-14-72, ef. 7-1-72; DOF 9-1998, f. & cert. ef. 6-3-98; DOF 2-2017, f. 6-9-17, cert. ef. 7-1-17

629-043-0020

Water Supply and Equipment for Fire Suppression

(1) When operating stationary equipment during fire season inside or within one-eighth of one mile of a forest protection district, pursuant to ORS 477.650, operators must provide the following water supply and equipment at each location where stationary equipment is operated:

(a) Water supply:

(A) A self-propelled motor vehicle which is equipped with a water tank containing not less than 300 gallons of water; or

(B) A pond, stream, tank, or sump containing not less than 500 gallons of water.

(b) Water delivery equipment:

(A) Water pump: Size and capacity shall be such that the pump will discharge not less than 20 gallons per minute at a pressure of at least 115 pounds per square inch at pump level;

(B) Hose and nozzle: A nozzle, and enough serviceable hose of not less than 3/4 inch inside diameter, to reach from the water supply to any location in the operation area affected by power driven machinery, or 500 feet, whichever is greater.

(2) When mobile equipment is used in an operation area during fire season, inside or within one-eighth of one mile of a forest protection district, pursuant to ORS 477.625(1)(a), the operator must provide a water supply which complies with at least the minimum capacity, pump, hose and nozzle requirements set forth in section (1) of this rule.

(3) "Operation area affected by power driven machinery" as used in this rule, means any part of the operation area where vegetation or flammable material might be ignited by exhaust, friction, or heated particles dropped or emitted from the power driven machinery or attached equipment, including, but not limited to any moving lines, drill or other attachments.

(4) Within an operation area, except as required by ORS 477.615 or 477.660, only one water supply will be required to comply with sections (1), (2) or both of this rule, so long as access and communications are such that the combination of water supply, pump and hose can timely deliver water to a fire start. Taking more than ten minutes from discovery of the fire to move a self-propelled water supply into position and/or begin to deploy hose and nozzle for an effective attack on a fire may indicate water delivery was not timely.

(5) All hose, motor vehicles, nozzles, pumps and tanks referred to in this rule shall be kept ready for immediate use.

(6) The water supply, pump, not less than 250 feet of hose, and the nozzle, as required by this rule, shall be maintained as a connected, operating unit and kept ready for immediate use.

(7) Nothing in this rule is intended to prohibit:

(a) An owner of forestland from requiring operators to provide additional water or equipment when operating on the owner's land or;

(b) An operator from using its water supply and equipment for initial attack on a nearby fire outside the operation area.

(8) When the operation only involves the use of self-loading log trucks on improved roads or landings cleared of flammable material, a water supply is not required.

(9) The forester, in written order, may reduce or waive any requirement of this rule if, in the judgment of the forester, conditions so warrant or to take advantage of alternate methods or equipment proposed by the operator which provide, in the judgment of the forester, equal or better suppression of fire.

Stat. Auth.: ORS 477.650

Stats. Implemented: ORS 477.650

Hist.: FB 17, f. & ef. 5-12-68; DOF 9-1998, f. & cert. ef. 6-3-98; DOF 2-2017, f. 6-9-17, cert. ef. 7-1-17

629-043-0023

Additional Water Supply and Equipment

(1) Pursuant to ORS 477.615, operators must provide a self-propelled motor vehicle equipped with a water tank containing not less than 300 gallons of water and that complies with the capacity, pump, hose, nozzle and readiness requirements set forth in OAR 629-043-0020, when directed by the forester in written order.

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(2) The forester may, in written order, reduce or waive any requirement of the order issued under this rule if, in the judgment of the forester, the conditions so warrant or to take advantage of alternate methods or equipment proposed by the operator which provide, in the judgment of the forester, equal or better suppression of fire.

Stat. Auth.: ORS 477.615
Stats. Implemented: ORS 477.615
Hist.: FB 17, f. & ef. 5-12-68; DOF 9-1998, f. & cert. ef. 6-3-98; Renumbered from 629-043-0010 by DOF 2-2017, f. 6-9-17, cert. ef. 7-1-17

629-043-0025

Fire Tools and Fire Extinguishers

Pursuant to ORS 477.655, during fire season inside or within one-eighth of one mile of a forest protection district, operators must comply with the following minimum fire tool and fire extinguisher requirements:

(1) During an operation in progress, provide at the operation area, or at a location approved by the forester, a tool box that contains a number of firefighting tools equal to or greater than the number of persons working on the operation.

(a) The tool boxes must be clearly identified as containing fire tools;

(b) The tools must only be used for fighting fire.

(c) The tools must include a mix of scraping tools (such as pulaski or hazel hoe), cutting tools (such as pulaski or axe) and shovels; appropriate for building a fire line and throwing dirt.

(d) The above requirements for a tool box and tools to be used exclusively for fire-fighting do not apply if there are four or fewer persons working on the operation and each person has a shovel, suitable for fire-fighting, available for immediate use while working on the operation.

(2) Provide at each internal combustion engine, except power saws, one 2 A:10 BC or higher (5 pound) rated fire extinguisher, or a combination of fire extinguishers that provide equivalent protection approved by a nationally recognized testing laboratory.

(3) Provide on each truck:

(a) One 2 A:10 BC or higher (5 pound) rated fire extinguisher, or a combination of fire extinguishers that provide equivalent protection approved by a nationally recognized testing laboratory.

(b) One round pointed shovel which has a face not less than 8 inches wide and a handle not less than 26 inches long; and

(c) One pulaski or axe which has a handle not less than 26 inches long.

(4) Provide at each block, except those blocks located at a landing:

(a) One pump equipped can or bladder containing not less than five gallons of water; and

(b) One round pointed shovel which has a face not less than 8 inches wide and a handle not less than 26 inches long.

(5) All bladders, cans, pumps, tool boxes, tools and fire extinguishers referred to in this rule must be kept ready for immediate use.

(6) Fire extinguishers required by this rule must be equipped with a reliable and easily read pressure gauge or device or method for measurement of the contents of the extinguisher.

(7) When an additional internal combustion engine is permanently attached to a truck or other piece of power driven machinery, one fire extinguisher for the combined engines, which complies with section (2) of this rule, is sufficient.

(8) The forester may, in written order, modify, reduce or waive any requirement of this rule if, in the judgment of the forester, conditions so warrant or to take advantage of alternate methods or equipment proposed by the operator which, in the judgment of the forester, will provide equal or better suppression of fire.

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

Stat. Auth.: ORS 477.655
Stats. Implemented: ORS 477.655
Hist.: FB 17, f. & ef. 5-12-68; FB 4-1985(Temp), f. & ef. 6-17-85; FB 3-1986, f. & ef. 3-12-86; DOF 9-1998, f. & cert. ef. 6-3-98; DOF 2-1999, f. & cert. ef. 5-13-99; DOF 2-2017, f. 6-9-17, cert. ef. 7-1-17

629-043-0026

Operation Area Fire Prevention

(1) Pursuant to ORS 477.625(1)(a), during a fire season, operators must comply with the following reasonable precautions that, in the judgment of the forester, are necessary to prevent the spread of fire on or from an operation area:

(a) When conducting a cable logging operation during fire season:

(A) Clear the ground of all flammable material (down to mineral soil) for not less than ten feet (radius) slope distance, from the point directly below any block.

(B) Do not permit moving lines to rub on rock or woody material in such a way to cause sparks or sufficient heat that may cause ignition of fire.

(b) Keep all power driven machinery free of excess flammable material which may create a risk of fire.

(c) When power driven machinery is left unattended, operators must disconnect main batteries from powered components (other than what may be necessary to retain computer memory) through a shut-off switch or other means or, if battery power is not disconnected, unattended power driven machinery must be left on ground cleared of flammable material.

(2) When conducting a operation during fire season which uses mobile equipment east of the summit of the Cascade Mountains and when directed by the forester in written order, the operator must comply with limitations on when mobile equipment may be used. The forester must base such limitations on the fire danger in the operation area, on the risk of fire beginning in the operation area, or due to a combination of any such conditions.

(3) When using fire to dispose of slashing at any time of year, the operator must develop a plan for prior approval which sets forth the personnel, equipment and procedures necessary to safely conduct the burning. The plan must be developed in such a manner as to give due consideration to prevention of fire escape and protection of life, forest resources, property and air quality.

(4) The forester may, in written order, reduce or waive any requirement of this rule if, in the judgment of the forester, conditions so warrant or to take advantage of alternate methods or equipment proposed by the operator which provide, in the judgment of the forester, equal or better prevention or suppression of fire.

Stat. Auth.: ORS 526.016 & 526.041
Stats. Implemented: ORS 477.625
Hist.: FB 4-1985(Temp), f. & ef. 6-17-85; FB 3-1986, f. & ef. 3-12-86; DOF 9-1998, f. & cert. ef. 6-3-98; DOF 2-2017, f. 6-9-17, cert. ef. 7-1-17

629-043-0030

Fire Watch Service

(1) Pursuant to ORS 477.665, during fire season inside or within one-eighth of one mile of a forest protection district, operators must comply with the following fire watch requirements. A person performing fire watch service must:

(a) Constantly observe the operation area during any breaks (up to three hours) in operation activity and for three hours after the power driven machinery used by the operator has been shut down for the day;

(b) Visually observe all portions of the operation area on which operation activity occurred during the preceding period of activity; and

(c) Be qualified in the use and operation of assigned firefighting equipment and tools; be physically capable of performing assigned fire suppression activities; and be advised of single employee assignment responsibilities (OAR 437-007-1315), when working alone.

(2) After a measurable amount of rain on the operation area, the forester may suspend the requirements of subsection (1) of this rule until such time as, in the judgment of the forester, conditions warrant reinstatement.

(3) The forester may reduce or waive any requirement of subsection (1)(a) or (b) of this rule in a written order if, in the judgment of the forester, conditions so warrant.

(4) Immediately following a period when the only operation activity has been the use of self-loading log trucks on improved roads or landings cleared of flammable material, fire watch service is not required.

(5) Pursuant to ORS 477.625(1)(a) operators must comply with the following fire watch service requirements:

(a) Each person providing fire watch service on an operation area must have adequate facilities for transportation and communication to be able to summon firefighting assistance in a timely manner.

(b) Upon discovery of a fire, fire watch personnel must:

(A) First report the fire, summon any necessary firefighting assistance, describe intended fire suppression activities and agree on a checking system; then

(B) After determining a safety zone and an escape route that will not be cut off if the fire increases or changes direction, immediately proceed to control and extinguish the fire, consistent with firefighting training and safety.

Stat. Auth.: ORS 477.665
Stats. Implemented: ORS 477.665
Hist.: FB 17, f. & ef. 5-12-68; FB 23, f. 6-5-70, ef. 6-25-70; DOF 9-1998, f. & cert. ef. 6-3-98; DOF 2-1999, f. & cert. ef. 5-13-99; DOF 2-2017, f. 6-9-17, cert. ef. 7-1-17

629-043-0036

Power Saws

Pursuant to ORS 477.640, any persons operating a power saw during fire season inside or within one-eighth of one mile of a forest protection

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district must comply with the following fire prevention and suppression requirements:

(1) A power saw must be equipped and maintained with a spark arrester and other fire prevention equipment that is listed in the most recent edition of a publication of the National Wildfire Coordinating Group and the U.S.D.A Forest Service, entitled "Spark Arrester Guide Volume 2 — Multi-Position Small Engine". Power saws which have been modified from the configuration, as tested and listed in the Spark Arrester Guide, are prohibited from use during fire season.

(2) When using a power saw, the following minimum fire tools and fire suppressants must be immediately available for the prevention and suppression of fire:

(a) One gallon of water or pressurized container of fire suppressant of at least eight ounce capacity; and

(b) One round pointed shovel which has a face not less than 8 inches wide and a handle not less than 26 inches long.

(3) A power saw motor must be stopped during fueling and moved not less than 20 feet from the place of fueling before being started.

(4) All fire prevention equipment, such as fire suppressants, fire tools, screens, shovels, spark arresters and spark arresting devices referred to in this rule must be kept ready for immediate use.

(5) If in the judgment of the forester conditions warrant, the forester may, in written order, reduce or waive any requirement of this rule.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 477.640

Stats. Implemented: ORS 477.640

Hist.: FB 47, f. 9-15-76, ef. 7-1-77; FB 48(Temp), f. & ef. 6-29-77; FB 50, f. & ef. 9-1-77; DOF 9-1998, f. & cert. ef. 6-3-98; DOF 2-1999, f. & cert. ef. 5-13-99; DOF 2-2017, f. 6-9-17, cert. ef. 7-1-17

629-043-0040

Burning Permits

(1) Pursuant to ORS 477.515, holders of permits for burning must:

(a) Before burning, clear the area immediately around and above the burn site of material that may carry fire;

(b) When burning in a barrel or similar container, completely cover the container openings with a screen constructed of not less than 14-gauge wire and that has openings which are no larger than one-fourth inch in diameter;

(c) Not allow the uncontrolled spread of fire away from the permitted burn site;

(d) Not burn on a day when burning has been prohibited by the forester because of increased fire danger or because of air quality conditions;

(e) Not burn without complying with all conditions, hours and dates set forth on the permit; and

(f) Not burn without complying with the open burning prohibitions set forth in OAR 340-264-0050 to 340-264-0170.

(2) The requirements of this rule do not apply to prescribed burning conducted in compliance with ORS 477.013 and 477.552 to 477.562, OAR 629-043-0026(4) and 629-048-0001 to 629-048-0500.

(3) The forester may, in a written order, reduce or waive any requirement of this rule if:

(a) In the judgment of the forester, conditions so warrant; and

(b) The burning complies with the requirements of ORS 477.515, and any applicable portions of Chapter 468, Chapter 468A and OAR chapter 340 division 264.

Stat. Auth.: ORS 477.013, 526.016 & 526.041

Stats. Implemented: ORS 477.013 & 477.515

Hist.: FB 6, f. 5-9-60; FB 8-1986, f. & ef. 9-25-86; DOF 11-1998, f. & cert. ef. 8-13-98; DOF 4-2007, f. 12-31-07, cert. ef. 1-1-08; DOF 2-2017, f. 6-9-17, cert. ef. 7-1-17

Department of Human Services, Administrative Services Division and Director's Office Chapter 407

Rule Caption: Confidentiality and Inadmissibility of Mediation Communications and Workplace Interpersonal Dispute Mediation Communications

Adm. Order No.: DHSD 5-2017

Filed with Sec. of State: 5-16-2017

Certified to be Effective: 5-16-17

Notice Publication Date:

Rules Amended: 407-014-0200, 407-014-0205

Rules Repealed: 407-014-0200(T), 407-014-0205(T)

Subject: Pursuant to ORS 36.224(4), the Department of Human Services is amending these rules to adopt by reference the Confidentiality and Inadmissibility of Mediation Communications rule, OAR 137-005-0052, and the Confidentiality and Inadmissibility of Workplace Interpersonal Mediation Communications rule, OAR 137-005-0054, adopted by the Attorney General, effective October 27, 2015.

With the permanent filing of these rules, the temporary rules effective May 15, 2017 are repealed.

Rules Coordinator: Jennifer Bittel—(503) 947-5250

407-014-0200

Confidentiality and Inadmissibility of Mediation Communications

Pursuant to ORS 36.224, the Department of Human Services adopts by reference OAR 137-005-0052 as promulgated by the Attorney General effective as of 10-27-2015.

Stat. Auth.: ORS 36.224, 184.340 & 409.050

Stats. Implemented: ORS 36.224, 36.228, 36.230, & 36.232

Hist.: OMAP 8-1999, f. & cert. ef. 3-1-99; Renumbered from 410-006-0011, DHSD 6-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 4-2017(Temp), f. 5-11-17, cert. ef. 5-15-17 thru 11-10-17; DHSD 5-2017, f. & cert. ef. 5-16-17

407-014-0205

Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

Pursuant to ORS 36.224, the Department of Human Services adopts by reference OAR 137-005-0054 as promulgated by the Attorney General effective as of 10-27-2015.

Stat. Authority: ORS 36.224 & 409.050

Stats. Implemented: ORS 36.230

Hist.: OMAP 8-1999, f. & cert. ef. 3-1-99; Renumbered from 410-006-0021, DHSD 6-2007, f. 6-29-07, cert. ef. 7-1-07; DHSD 4-2017(Temp), f. 5-11-17, cert. ef. 5-15-17 thru 11-10-17; DHSD 5-2017, f. & cert. ef. 5-16-17

Department of Human Services, Aging and People with Disabilities and Developmental Disabilities Chapter 411

Rule Caption: Establishing rules for in-home care agencies providing Medicaid in-home services

Adm. Order No.: APD 12-2017

Filed with Sec. of State: 5-30-2017

Certified to be Effective: 5-30-17

Notice Publication Date: 5-1-2017

Rules Adopted: 411-033-0000, 411-033-0010, 411-033-0030

Rules Ren. & Amend: 411-030-0090 to 411-033-0020

Subject: The Department of Human Services (Department) is adopting rules for in-home care agencies providing Medicaid in-home services in OAR chapter 411, division 033 to:

- Assist the Department to move the in-home care agencies from Medicaid contractual agreements (statement of work) to "provider enrollment applications and agreements".

- Establish types of services in-home care agencies (IHCA) can provide, provider enrollment, payment, and other requirements to be a Medicaid IHCA provider.

- Ensure in-home care agencies (IHCA), continue as one of the Medicaid in-home services provider options, provide services to maximize independence, empowerment, dignity, and human potential through the provision of flexible, efficient, and suitable services. In-home services fill the role of complementing and supplementing an individual's own personal abilities to continue to live in their own home.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-033-0000

Purpose and Scope

The rules in OAR chapter 411, division 033 ensure in-home care agencies, as one of the Medicaid in-home service provider options, provide services to maximize independence, empowerment, dignity, and human potential through the provision of flexible, efficient, and suitable services. In-home services fill the role of complementing and supplementing an individual's personal abilities, so the individual is able to continue to live in their own home.

Stat. Auth.: ORS 409.050, 410.070, 410.090, 413.085

Stats. Implemented: ORS 410.010, 410.020, 410.070, 413.085

Hist.: APD 12-2017, f. & cert. ef. 5-30-17

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Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 033:

- (1) "AAA" means "Area Agency on Aging" as defined in this rule.
- (2) "Activities of Daily Living (ADL)" mean those personal, functional activities required by an individual for continued well-being, which are essential for health and safety. Activities include eating, dressing, grooming, bathing, personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), cognition, and behavior as defined in OAR 411-015-0006.
- (3) "ADL" means "activities of daily living" as defined in this rule.
- (4) "Aging and People with Disabilities" means the program area of Aging and People with Disabilities, within the Department of Human Services.
- (5) "APD" means "Aging and People with Disabilities".
- (6) "Area Agency on Aging (AAA)" means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to individuals in a planning and service area. The term Area Agency on Aging is inclusive of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 and described in ORS 410.210 to 410.300.
- (7) "Assessment" means an assessment as defined in OAR 411-015-0008.
- (8) "Background Check" means a criminal background check and an abuse check under OAR chapter 407, division 007.
- (9) "Business Days" means Monday through Friday and excludes Saturdays, Sundays, and state or federal holidays.
- (10) "CA/PS" means the "Client Assessment and Planning System" as defined in OAR 411-030-0020.
- (11) "Case Manager" or "CM" means a Department employee or an employee of the Department's designee that meets the minimum qualifications in OAR 411-028-0040 who is responsible for service eligibility, assessment of need, offering service choices to eligible individuals, person-centered service planning, service authorization and implementation, and evaluation of the effectiveness of Medicaid home and community-based services.
- (12) "Comprehensive" means a licensing classification that describes an agency that provides personal care services, which may include medication reminding, medication assistance, medication administration, and nursing services (see OAR 333-536-0007).
- (13) "Consumer" means an individual eligible for in-home services.
- (14) "Cost Effective" means being responsible and accountable with Department resources. This is accomplished by offering less costly alternatives when providing choices that adequately meet an individual's service needs. Those choices consist of all available services under the Medicaid home and community-based service options, the utilization of assistive devices, natural supports, architectural modifications, and alternative service resources (see OAR 411-015-0005). Less costly alternatives may include resources not paid for by the Department.
- (15) "Department" means the Department of Human Services (DHS).
- (16) "Enrolled In-Home Care Agency" means an incorporated entity or equivalent, licensed in accordance with OAR chapter 333, division 536 that provides hourly enrolled in-home services to individuals receiving services through the Department or the Area Agency on Aging.
- (17) "Exception" means an approval for payment of a service plan that is granted to a specific individual that exceeds the assessed maximum hours of service as described in OAR 411-030-0070, for individuals residing in his or her own home.
- (18) "Exceptional Rate" or "Exceptional Payment" means the amount paid to a provider based on the approval of an exception. The approval of an exception is based on the service needs of the individual and is contingent upon the individual's service plan meeting the requirements in OAR 411-027-0020, 411-027-0025, and 411-027-0050.
- (19) "Homecare Worker" means a provider, as described in OAR 411-031-0040, that is directly employed by an individual to provide hourly services to the eligible individual. The term homecare worker does not include an employee of an in-home care agency who is providing in-home services.
- (20) "Hourly Services" means the in-home services, including activities of daily living and instrumental activities of daily living, that are provided at regularly scheduled times, not including live-in services.
- (21) "IADL" means "instrumental activities of daily living" as defined in this rule.

(22) "ICP" means "Independent Choices Program" as defined in this rule.

(23) "Independent Choices Program" means a self-directed in-home services program in which a participant is given a cash benefit to purchase goods and services identified in the participant's service plan and prior approved by the Department or the Area Agency on Aging.

(24) "Individual" means a person age 65 or older, or an adult with a physical disability, applying for or eligible for services.

(25) "In-Home Care Agency" or "IHCA" means an agency as defined in OAR 333-536-0005 that is primarily engaged in providing in-home care services for compensation to an individual in that individual's place of residence. "In-home care agency" does not include a home health agency or portion of an agency providing home health services.

(26) "In-Home Services" as defined in OAR 411-030-0002 mean the activities of daily living and instrumental activities of daily living that assist an individual to stay in his or her own home or the home of a relative.

(27) "In-Home Care Services" as defined in OAR 333-536-0005, means personal care services furnished by an in-home care agency, or an individual under an arrangement or contract with an in-home care agency, that are necessary to assist an individual in meeting the individual's daily needs, but do not include curative or rehabilitative services.

(28) "Initial Screening" means a screening required by the in-home care agency licensing rules in OAR 333-536-0055 that is conducted to evaluate a prospective client's service requests and needs prior to accepting the individual for service. The extent of the screening shall be sufficient to determine the ability of the agency to meet those requests and needs based on the agency's overall service capability.

(29) "Instrumental Activities of Daily Living (IADL)" mean those activities, other than activities of daily living, required by an individual to continue independent living. The definitions and parameters for assessing needs in IADL are identified in OAR 411-015-0007.

(30) "Liability" means the dollar amount an individual with excess income contributes to the cost of service pursuant to OAR 461-160-0610 and OAR 461-160-0620.

(31) "Licensed" means an in-home care agency as defined in OAR 333-536-0005 that is currently licensed, certified, or registered by the proper authority within the State of Oregon.

(32) "Mandatory Reporter" means all employees of an in-home health service, are required by statute (ORS 124.050 – 124.095) to report suspected abuse or neglect of a child, an older adult, a person with a physical disability or the resident of a licensed care facility, to the Department or to a law enforcement agency as required by OAR 411-020-0002.

(33) "Medicaid OHP Plus Benefit Package" means only the Medicaid benefit packages provided under OAR 410-120-1210(4) (a) and (b). This excludes individuals receiving Title XXI benefits.

(34) "Medicaid Performing Provider Number" means the numeric identifier assigned to an entity or person by the Department, following enrollment to deliver Medicaid funded services as described in these rules. The Medicaid Performing Provider Number is used by the rendering provider for identification and billing purposes associated with service authorizations and payments.

(35) "Natural Supports" or "Natural Support System" means resources and supports (e.g. relatives, friends, neighbors, significant others, roommates, or the community) who are willing to voluntarily provide services to an individual without the expectation of compensation. Natural supports are identified in collaboration with the individual and the potential "natural support". The natural support is required to have the skills, knowledge, and ability to provide the needed services and supports.

(36) "Nursing Services" means the provision of services that are defined in OAR 333-536-0005, that are deemed to be the practice of nursing as defined by ORS 678.010. These services include, but are not limited to the delegation of specific tasks of nursing care to unlicensed persons in accordance with the Oregon State Board of Nursing rules in OAR chapter 851, division 047. Nursing services are not rehabilitative or curative, but are maintenance in nature.

(37) "OHA" means the Oregon Health Authority.

(38) "Person-Centered Service Plan" means the details of the supports, desired outcomes, activities, and resources required for an individual to achieve and maintain personal goals, health, and safety, as described in OAR 411-004-0030. The case manager completes the person-centered service plan. The person-centered service plan is the Medicaid Plan of Care.

(39) "Personal Care Aid" means a person employed by an in-home care agency who provides assistance with activities of daily living or assis-

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tance with personal care tasks, household and supportive services, or medication services as authorized by OAR chapter 333 division 536.

(40) "Provider Enrollment Application and Agreement" refers to the conditions and agreements for being enrolled as a provider with the Department of Human Services, Aging and People with Disabilities (APD) or Office of Developmental Disability Services (ODDS), and to receive a provider number.

(41) "Rate Schedule" means the Medicaid reimbursement rate schedule maintained by the Department in OAR 411-027-0170.

(42) "Relative" means a person, excluding an individual's spouse, who is related to the individual by blood, marriage, domestic partnership, or adoption.

(43) "Representative" means a person either appointed by an individual to participate in service planning on the individual's behalf or an individual's natural support with longstanding involvement in assuring the individual's health, safety, and welfare. A representative may not be a paid employee or the in-home care agency.

(44) "Service Need" means the assistance an individual requires from another person for those functions or activities identified in OAR 411-015-0006 and 411-015-0007.

(45) "Service Plan" means a written, individualized plan for the delivery of services by the IHCA, developed by the IHCA in conjunction with the individual or the individual's legal representative, the DHS or AAA case manager reflecting the individual's capabilities, choices, and if applicable, measurable goals, and managed risk issues. The service plan defines the division of responsibility in the implementation of the services. The service plan must incorporate all elements identified in the person-centered service plan for which the IHCA is responsible to deliver.

(46) "Spouse" means a person who is legally married to an individual as defined in OAR 461-001-0000.

(47) "These Rules" mean the rules in OAR chapter 411, division 033.

(48) "Work week" is defined as 12:00 a.m. on Sunday through 11:59 p.m. on Saturday.

Stat. Auth.: ORS 409.050, 410.070, 410.090, 413.085

Stats. Implemented: ORS 410.010, 410.020, 410.070, 413.085

Hist.: APD 12-2017, f. & cert. ef. 5-30-17

411-033-0020

In-Home Care Agency Services

(1) In-home care agency (IHCA) services are one of the in-home service options available for individuals eligible for Medicaid in-home services. The in-home care agency must be licensed in accordance with OAR chapter 333, division 536 or as a licensed home health agency that has obtained the in-home care service designation from the Oregon Health Authority according to ORS 443.305–443.355.

(2) Medicaid-funded in-home care services, provided by the in-home care agency, are not available to individuals who reside in a licensed or certified community based care setting or while inpatient in a hospital or nursing facility setting.

(3) Prior to accepting an individual for in-home care agency services, the IHCA must complete the initial screening to evaluate a prospective client's service requests as defined in OAR 333-536-0055.

(a) The IHCA shall notify the referring AAA or DHS office and individual or individual's representative via email or phone of acceptance for services. The IHCA shall begin services within five business days from the date of acceptance unless the individual's health and safety requires an earlier start date to be determined by the AAA or DHS case manager and communicated to the IHCA prior to acceptance.

(b) The case manager and IHCA must review the individual's person-centered service plan to assure the IHCA's understanding of the individual's service plan and assessed needs. Upon completion of case manager and IHCA review, the case manager shall draft a list of tasks based upon the person-centered service plan to be completed by the IHCA. This "task list" must be signed by the IHCA and returned to the CM.

(4) Services Provided.

(a) The services provided by the IHCA, in accordance with OAR 333-536-0045, must be based on the case manager's assessment and the person-centered service plan of the individual.

(b) Services must include the safe provision of:

(A) All assessed ADL supports;

(B) All assessed IADL supports; and

(C) Nursing services as required in the comprehensive certification in accordance with OAR chapter 333, division 536. The IHCA must ensure the services provided include medication reminding, medication assistance, medication administration, and nursing services in accordance with OAR chapter 333, division 536.

(c) If the individual requires nursing services, the IHCA must conduct nursing assessment, monitoring, intermittent nursing care, and teaching and delegation of specific tasks. Nursing services must be provided by an Oregon-licensed registered nurse in accordance with the Oregon State Board of Nursing Administrative Rules in OAR chapter 851, divisions 045, 047, and 048, and OHA, Public Health Administrative Rules in OAR chapter 333, division 536.

(d) For individuals accessing both IHCA and other in-home service options, the IHCA is only responsible for teaching and delegation to the IHCA employees. If other caregivers, who are not IHCA employees, are providing services and supports that require nurse delegation, the IHCA must coordinate delegation activities with other Department assigned nurses to ensure continuity of care.

(e) IHCA employees, caregivers, nursing staff, and administrators, must carry identification indicating their name and the name of the IHCA for which they work.

(f) The IHCA must ensure the individual is notified of any changes in the delivery of the IHCA's service plan, such as a change in the personal care aid who provides the in-home service, the frequency of the service and the day and time when of the services will be provided in accordance with OAR 333-536-0060 Clients' Rights and 333-536-0065 Service Plan.

(5) Complaints.

(a) In accordance to OAR 333-536-0042, any person may make a complaint verbally or in writing to the OHA Public Health Division regarding an allegation as to the care or services provided by an in-home care agency or violations of in-home care agency laws or regulations.

(b) Mandatory reporting. All employees of an in-home health service, which does include IHCA are required by statute (ORS 124.050–124.095) to report suspected abuse or neglect of a child, an older adult, a person with a physical disability or the resident of a licensed care facility, to the Department or to a law enforcement agency as required by OAR 411-020-0020.

(6) Disclosure Statements.

(a) As defined in OAR 333-536-0055, a written disclosure statement shall be signed by the individual or the individual's representative. The disclosure statement must be specific to the services provided to the Medicaid service individual.

(b) The disclosure statement must include the requirements of OAR 333-536-0055, in addition to all of the following:

(A) Medicaid is the source of payment for the services provided by the IHCA. The Medicaid service payment is considered full payment for Medicaid services provided by the IHCA.

(B) A description of the initial assessment and service planning process.

(C) A description of the services to be provided and how those services will be provided, including a discussion regarding staffing availability and coordination.

(D) IHCA and individual's rights and responsibilities.

(E) Individual's rights pertaining to notification of termination of services.

(F) The IHCA may not include any provision in the disclosure statement that effect individual's rights or the IHCA's liability for negligence.

(G) For individuals receiving IHCA services, as described in OAR 333-536-0045, the services provided must be in accordance with the Medicaid assessment and service plan and the IHCA's written service plan developed in conjunction with an individual or individual's representative, based on the individual's or individual's representative's request, and an evaluation of the individual's physical, mental, and emotional needs.

(c) The disclosure statement for Medicaid individual's may not include language referring to "buy outs" and "finder's fees", or include language preventing individuals from full access to other in-home services. IHCA's may not charge any Medicaid individual additional fees or penalties.

(7) BACKGROUND CHECKS. According to OAR 333-536-0093, the IHCA must:

(a) Ensure a criminal background check has been conducted on all individuals employed by, or volunteering for the IHCA who may have direct contact through a business relationship with the consumer.

(b) IHCA's receiving Medicaid reimbursement must conduct their background checks through the DHS Background Check Unit and comply with the DHS criminal records and abuse check rules found in OAR 407-007-0200 through 407-007-0370 and in accordance to the time frame specified in OAR 333-536-0093.

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(A) Unless, based on possible criminal activity or other allegations against an IHCA employee, a new fitness determination is conducted resulting in a change in approval status; or

(B) The Department or AAA may request a recheck more frequently based on additional information discovered about an IHCA employee or volunteer, such as possible criminal activity or other allegations.

Stat. Auth.: ORS 409.050, 410.070, 410.090, 413.085

Stats. Implemented: ORS 410.010, 410.020, 410.070, 413.085

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; SPD 15-2008, f. 12-26-08, cert. ef. 1-1-09; SPD 10-2013(Temp), f. & cert. ef. 5-23-13 thru 11-19-13; SPD 43-2013, f. 10-31-13, cert. ef. 11-1-13; APD 12-2017, f. & cert. ef. 5-30-17; Renumbered from 411-030-0090 by APD 12-2017, f. & cert. ef. 5-30-17

411-033-0030

Medicaid In-Home Care Agency Provider Enrollment, Requirements, and Payment

(1) PROVIDER ENROLLMENT.

(a) Application and Agreement. A provider must be an enrolled Medicaid provider in order to be eligible to receive payment from the Department for claims in connection with services provided by an IHCA.

(b) The criteria for provider enrollment includes, but is not limited to: (A) Meeting all program-specific requirements;

(B) Providing a copy of the IHCA agency's current OHA Public Health issued comprehensive classified license;

(C) Obtaining a Medicaid Provider Number;

(D) Current Business registration and assumed business name (DBA), if applicable, with the Oregon Secretary of State's Corporations Division; and

(E) Completing a Medicaid Provider Enrollment Agreement.

(2) Staffing Requirements. According to OAR 333-536-0070, the agency owner or administrator shall ensure the agency has qualified and trained employees sufficient in number to meet the needs of the clients receiving services 365 days per year, including holidays.

(3) On-site Monitoring and Assessment. The IHCA shall provide to DHS or the AAA a quarterly summary report for each Medicaid individual, which includes documentation of client needs and services delivered. These records must be maintained by the IHCA to provide the records necessary to fully disclose the extent of the services, care, and supplies furnished to beneficiaries.

(a) The IHCA shall provide a copy of all information and documents as requested by DHS or the AAA. This requested information may include, but is not limited to:

(A) Individual records (OAR 333-536-0085).

(B) Individual nursing services (OAR 333-536-0080).

(C) Quality improvement records (OAR 333-536-0090).

(D) Complaint investigation findings (OAR 333-536-0043).

(E) Organization, administration, and personnel records (OAR 333-536-0050).

(F) Individual surveys of services and payments (OAR 333-536-0041).

(G) The requested information shall be submitted to DHS or the AAA within five business days of the request. However, if the requesting DHS or AAA office indicates the request involves individual safety, well-being, or a protective service investigation, the information must be submitted within 24 hours of the request.

(b) The IHCA shall cooperate with any DHS quality assurance visits regarding monitoring of any provision of IHCA services.

(c) The IHCA shall participate in individual conferences with DHS or AAA case managers, as requested.

(4) Insurance Requirements. Insurance requirements are defined in the Provider Enrollment Agreement.

(5) Payment and Financial Reporting.

(a) The case manager shall authorize reimbursement for the service hours identified in the individual's Medicaid Management Information System (MMIS) plan of care.

(b) The IHCA must use MMIS to submit claims for reimbursement of Medicaid authorized services. All claims must be submitted no later than 12 months from date of service.

(c) The IHCA shall be reimbursed:

(A) Only for services delivered to an individual.

(B) Only at the approved hourly rate for ADL and IADL services.

(C) For up to three hours at the ADL care rate, for the required, completed initial assessment.

(D) For community transportation mileage related to an assessed ADL or IADL need (e.g. shopping). Reimbursement for community trans-

portation may not include mileage for an employee commuting to and from the individual's home. The IHCA employee must maintain valid driver's license, current vehicle registration and necessary auto insurance, if transporting the Medicaid individual. Proof must be available upon the request of the Department.

(d) IHCA's shall be reimbursed per the rates established in the rate schedule for home and community-based services in OAR 411-027-0170.

Stat. Auth.: ORS 409.050, 410.070, 410.090, 413.085

Stats. Implemented: ORS 410.010, 410.020, 410.070, 413.085

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Rule Caption: ODDS: In-Home Expenditure Guidelines

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Rules Amended: 411-317-0000

Rules Repealed: 411-317-0000(T)

Subject: The Department of Human Services, Office of Developmental Disabilities Services (ODDS) is permanently amending OAR 411-317-0000 to make permanent the temporary changes that became effective on May 1, 2017 that were made to incorporate Version 6.0 of the In-Home Expenditure Guidelines that became effective on May 1, 2017.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-317-0000

Definitions for Developmental Disability Services

This rule, OAR 411-317-0000, defines words and terms frequently used in OAR chapter 411, divisions 300 to 450 for developmental disabilities services. OAR chapter 411, divisions 300 to 450 may include definitions specific to the subject matter in that division. If a word or term is defined differently than what is in this rule, the definition in that division applies, when used in that division.

(1) "24-Hour Residential Program" means the distinct method for the delivery of home and community-based services in a 24-hour residential setting by a provider certified and endorsed under the rules in OAR chapter 411, division 323.

(2) "24-Hour Residential Setting" means a residential home, apartment, or duplex licensed by the Department under ORS 443.410 in which home and community-based services are provided to individuals with intellectual or developmental disabilities. A 24-hour residential setting is considered a provider owned, controlled, or operated residential setting.

(3) "Abuse" means:

(a) For a child:

(A) "Abuse" as defined in ORS 419B.005.

(B) "Abuse" as defined in OAR 407-045-0260 when a child resides in a 24-hour residential setting licensed by the Department as described in OAR chapter 411, division 325.

(b) For an individual between the ages of 18 and 21 residing in a certified child foster home, "abuse" as defined in OAR 407-045-0260.

(c) For an adult, "abuse" as defined in OAR 407-045-0260.

(4) "Abuse Investigation" means the reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required by OAR 407-045-0310.

(5) "Accident" means an event that results in injury, or has the potential for injury, even if the injury does not appear until after the event.

(6) "Activities of Daily Living (ADL)" are the basic personal everyday activities, such as eating, using the restroom, grooming, dressing, bathing, and transferring. ADL services include, but are not limited to the following:

(a) Basic personal hygiene — providing or assisting with needs, such as bathing (tub, bed, bath, shower), hair care, grooming, shaving, nail care, foot care, dressing, skin care, or oral hygiene.

(b) Toileting, bowel, and bladder care — assisting to and from the bathroom, on and off toilet, commode, bedpan, urinal, or other assistive device used for toileting, changing incontinence supplies, following a toileting schedule, managing menses, cleansing an individual or adjusting clothing related to toileting, emptying a catheter, drainage bag, or assistive device, ostomy care, or bowel care.

(c) Mobility, transfers, and repositioning — assisting with ambulation or transfers with or without assistive devices, turning an individual or

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adjusting padding for physical comfort or pressure relief, or encouraging or assisting with range-of-motion exercises.

(d) Nutrition — assisting with adequate fluid intake or adequate nutrition, assisting with food intake (feeding), monitoring to prevent choking or aspiration, assisting with adaptive utensils, cutting food, and placing food, dishes, and utensils within reach for eating.

(e) Delegated nursing tasks.

(f) First aid and handling emergencies — addressing medical incidents related to the conditions of an individual, such as seizure, aspiration, constipation, or dehydration, responding to the call of the individual for help during an emergent situation, or for unscheduled needs requiring immediate response.

(g) Assistance with necessary medical appointments — help scheduling appointments, arranging medical transportation services, accompaniment to appointments, follow up from appointments, or assistance with mobility, transfers, or cognition in getting to and from appointments.

(h) Observation of the status of an individual and reporting of significant changes to a physician, health care provider, or other appropriate person.

(7) “ADL” means “activities of daily living”.

(8) “Administration of Medication” means the act of placing a medication in or on the body of an individual by a person responsible for the care of the individual and employed by, or under contract to, the individual or as applicable their legal or designated representative or a provider organization.

(9) “Administrator Review” means the Director of the Department reviews a decision upon request, including the documentation related to the decision, and issues a determination.

(10) “Adult” means an individual who is 18 years of age or older with an intellectual or developmental disability.

(11) “Advocate” means a person other than paid staff who has been selected by an individual or their legal representative to help the individual understand and make decisions in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(12) “Agency” means a public or private community agency or organization certified by the Department to deliver developmental disabilities services.

(13) “Aids to Physical Functioning” means any special equipment prescribed for an individual by a physician, therapist, or dietician that maintains or enhances the physical functioning of the individual.

(14) “Alternative Resources” mean possible resources, not including developmental disabilities services, for the provision of supports to meet the needs of an individual. Alternative resources include, but are not limited to, private or public insurance, vocational rehabilitation services, supports available through the Oregon Department of Education, or other community supports.

(15) “Annual Plan” means the written summary a case manager completes for an individual who is not enrolled in waiver or Community First Choice state plan services. An Annual Plan is not an ISP and is not a plan of care for Medicaid purposes.

(16) “Attendant Care” means an hourly service that provides assistance with ADL, IADL, and health-related tasks through cueing, monitoring, reassurance, redirection, set-up, hands-on, standby assistance, and reminding. Attendant care is available through the Community First Choice state plan.

(17) “Authority” means “Oregon Health Authority”.

(18) “Background Check” means a criminal records check and abuse check as defined in OAR 407-007-0210.

(19) “Baseline Level of Behavior” means the frequency, duration, or intensity of a behavior, objectively measured, described, and documented prior to the implementation of an initial or revised Behavior Support Plan (BSP). The baseline level of behavior serves as the reference point by which the ongoing efficacy of a BSP is to be assessed.

(20) “Bedroom” means the personal space and sleeping area of an individual receiving home and community-based services in a provider owned, controlled, or operated residential setting, as agreed to in the Residency Agreement.

(21) “Behavior Consultant” means a contractor with specialized skills who meets the minimum qualifications defined in the Community First Choice state plan, who conducts functional assessments, and develops a Behavior Support Plan.

(22) “Behavior Data Collection System” means the methodology specified within a Behavior Support Plan that directs the process for record-

ing observations, interventions, and other support provision information critical to the analysis of the efficacy of the Behavior Support Plan.

(23) “Behavior Data Summary” means the document composed to summarize episodes of protective physical intervention. The behavior data summary serves as a substitution for the requirement of an incident report for each episode of protective physical intervention.

(24) “Behavior Support Plan” means the written strategy, based on person-centered planning and a functional assessment that outlines specific instructions for a primary caregiver or provider to follow in order to reduce the frequency and intensity of the challenging behaviors of an individual and to modify the behavior of the primary caregiver or provider, adjust the environment of the individual, and teach new skills to the individual.

(25) “Behavior Support Services” mean the services consistent with positive behavioral theory and practice that are delivered in accordance with a Behavior Support Plan to assist with behavioral challenges due to the intellectual or developmental disability of an individual that prevents the individual from accomplishing ADL, IADL, health-related tasks, and provides cognitive supports to mitigate behavior.

(26) “Brokerage” means an entity or distinct operating unit within an existing entity that uses the principles of self-determination to perform the functions associated with planning and implementation of services for individuals with intellectual or developmental disabilities.

(27) “BSP” means “Behavior Support Plan”.

(28) “Career Development Plan”:

(a) Means the part of an ISP that identifies the following:

(A) The employment goals and objectives for an individual.

(B) The services and supports needed to achieve those goals.

(C) The people, agencies, and providers assigned to assist the individual to attain those goals.

(D) The obstacles to the individual working in an individualized job in a competitive integrated employment setting and the services and supports necessary to overcome those obstacles.

(b) A Career Development Plan is based on person-centered planning principles.

(29) “Case Management Contact” means a reciprocal interaction between a case manager and an individual or their legal or designated representative (as applicable).

(30) “Case Management Entity” means a CDDP, a Brokerage, CIIS, or the Children’s Residential Program of the Department.

(31) “Case Management Services” means the functions performed by a case manager that are funded by the Department. Case management services include, but are not limited to the following:

(a) Assessment of support needs.

(b) Developing an ISP or Annual Plan that may include authorized services.

(c) Information and referral for services.

(d) Monitoring the effectiveness of services and supports.

(32) “Case Manager” means a person who delivers case management services or person-centered service planning for and with individuals, meets the qualifications of OAR 411-415-0040, and is employed as one of the following:

(a) A personal agent by a Brokerage.

(b) A services coordinator by a CDDP.

(c) A services coordinator by the Department.

(33) “CDDP” means “Community Developmental Disabilities Program”.

(34) “Centers for Medicare and Medicaid Services”. The Centers for Medicare and Medicaid Services is the federal agency within the United States Department of Health and Human Services responsible for the administration of Medicaid, the Health Insurance Portability and Accountability Act (HIPAA), and for overseeing Medicaid programs administered by the states through survey and certification.

(35) “Chemical Restraint” means the use of a psychotropic drug or other drugs for punishment or to modify behavior in place of a meaningful behavior or treatment plan.

(36) “Child” means an individual under the age of 18.

(37) “Children’s Intensive In-Home Services” includes case management from a Department employed services coordinator and the services authorized by the Department delivered through the following:

(a) The ICF/ID Behavioral Program.

(b) The Medically Fragile Children’s Program.

(c) The Medically Involved Children’s Program.

(38) “Choice” means the expression of preference, opportunity for, and active role of an individual in decision-making related to services

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received and from whom services may be received including, but not limited to, case management, providers, services, and service settings. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated through a variety of methods, including orally, through sign language, or by other communication methods.

(39) "Choice Advising" means the impartial sharing of information to individuals with intellectual or developmental disabilities about the following:

- (a) Case management options.
- (b) Service options.
- (c) Service setting options.
- (d) Provider types.

(40) "Children's Health Insurance Program" means Oregon medical coverage under Title XXI of the Social Security Act.

(41) "CHIP" means the "Children's Health Insurance Program".

(42) "CIIS" means "Children's Intensive In-Home Services".

(43) "Claimant" means the person directly impacted by an action that is the subject of a hearing request.

(44) "CME" means "Case Management Entity".

(45) "CMS" means "Centers for Medicare and Medicaid Services".

(46) "Collective Bargaining Agreement" means a contract based on negotiation between organized workers and their designated employer for purposes of collective bargaining to determine wages, hours, rules, and working conditions.

(47) "Community Developmental Disabilities Program" means the entity that is responsible for plan authorization, delivery, and monitoring of services for individuals who are not enrolled in a Brokerage. A Community Developmental Disabilities Program operates in a specific geographic service area of the state under a contract with the Department, local mental health authority, or other entity as contracted by the Department.

(48) "Community First Choice (K Plan)" means the state plan amendment for Oregon authorized under section 1915(k) of the Social Security Act.

(49) "Community Living Supports" means attendant care, skills training, and relief care.

(50) "Community Transportation" means the ancillary service described in OAR 411-435-0050 that enables an individual to gain access to community-based state plan and waiver services, activities, and resources, not medical in nature. Community transportation is provided in the area surrounding the home of the individual commonly used by people in the same area to obtain ordinary goods and services. Community transportation is available through the Community First Choice state plan.

(51) "Complaint" means an oral or written expression of dissatisfaction with a developmental disabilities service or provider.

(52) "Complaint Investigation" means the investigation of a non-abuse related complaint that has been made to a proper authority.

(53) "Complaint Log" means a list of complaint-related information.

(54) "Completed Application" means an application required by the Department that:

(a) Is filled out completely, signed, and dated. An applicant who is unable to sign may sign with a mark, witnessed by another person.

(b) Contains documentation required to make an eligibility determination as outlined in OAR 411-320-0080.

(55) "Condition" means a provision attached to a new or existing certificate, endorsement, or license that limits or restricts the scope of the certificate, endorsement, or license or imposes additional requirements on the provider.

(56) "Continuing Services" means the continuation of a developmental disabilities service following the request for a hearing. Services continue until a Final Order is issued.

(57) "Cost Effective" means being responsible and accountable with Department resources by offering less costly alternatives when providing choices that adequately meet the support needs of an individual. Less costly alternatives include other service settings available from the Department and the utilization of assistive devices, natural supports, environmental modifications, and alternative resources. Less costly alternatives may include resources not paid for by the Department.

(58) "County of Origin" means:

(a) For an adult, the county of residence for the adult.

(b) For a child, the county where the jurisdiction of guardianship exists.

(59) "Day" means a calendar day unless otherwise specified.

(60) "DD Administrative Hearing Request" means form APD 0443DD.

(61) "Denial" means any rejection of a request for a developmental disabilities service or for an increase in a developmental disabilities service. A denial of a Medicaid service requires a Notification of Planned Action.

(62) "Delegation" is the process by which a registered nurse authorizes an unlicensed person to perform nursing tasks and confirms that authorization in writing. Delegation may occur only after a registered nurse follows all steps of the delegation process as outlined in OAR chapter 851, division 047.

(63) "Department" means "Department of Human Services".

(64) "Department Hearing Representative" means a person authorized by the Department to represent the Department in a hearing as described in OAR 411-001-0500.

(65) "Department Staff" means a person employed by the Department who is knowledgeable in a particular subject matter.

(66) "Designated Representative":

(a) Means a person who is 18 years of age or older, such as a parent, family member, guardian, or advocate, who is:

(A) Chosen by an individual or their legal representative.

(B) Not a paid provider for the individual.

(C) Authorized by the individual, or as applicable their legal representative, to serve as the representative of the individual, or as applicable, their legal representative, in connection with the provision of funded supports.

(b) The power to act as a designated representative is valid until an individual modifies the authorization.

(c) An individual or their legal representative is not required to appoint a designated representative.

(67) "Developmental Disability" means a neurological condition that:

(a) Originates before an individual is 22 years of age or 18 years of age for an intellectual disability.

(b) Originates in and directly affects the brain and has continued, or is expected to continue, indefinitely.

(c) Constitutes significant impairment in adaptive behavior as diagnosed and measured by a qualified professional as described in OAR 411-320-0080.

(d) Is not primarily attributed to other conditions including, but not limited to, a mental or emotional disorder, sensory impairment, motor impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder (ADHD).

(e) Requires training and support similar to an individual with an intellectual disability as described in OAR 411-320-0080.

(68) "Developmental Disabilities Services" mean the services provided by or authorized by a CDDP, Brokerage, or the Department that are comprised of the following:

(a) Case management services described in OAR chapter 411, division 415.

(b) Services available through the Community First Choice state plan.

(c) Services available through a 1915(c) waiver.

(69) "Director" means the Director of the Department of Human Services, Office of Developmental Disabilities Services, or the designee of the Director, which may include Department Staff.

(70) "Domestic Animals" means the animals domesticated so as to live and breed in a tame condition, such as dogs, cats, and domesticated farm stock.

(71) "Employer" means, for the purposes of obtaining services through a personal support worker, the common law employer. The common law employer is the individual, or a person selected by the individual or their legal representative, to conduct the responsibilities of an employer. An employer may also be a designated representative.

(72) "Employer-Related Supports" mean the activities that assist an individual, and when applicable their legal or designated representative or family members, with directing and supervising the provision of services described in the ISP for the individual. Employer-related supports may include, but are not limited to, the following:

(a) Education about employer responsibilities.

(b) Orientation to basic wage and hour issues.

(c) Use of common employer-related tools, such as Service Agreements.

(d) Fiscal intermediary services.

(73) "Employment Service" means a home and community-based service that supports the primary objective of exploring, obtaining, maintaining, or advancing in an individual job in a competitive integrated employment setting in the general workforce.

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(a) Employment services under the rules in OAR chapter 411, division 345 include the following:

- (A) Supported Employment.
 - (i) Individual Employment Support.
 - (I) Job Coaching.
 - (II) Job Development.
 - (ii) Small Group Employment Support.
- (B) Discovery.
- (C) Employment Path Services.

(b) Employment services do not include vocational assessments in sheltered workshop settings or facility-based settings. Employment services do not include new participants in sheltered workshop settings.

(74) "Entity" means a person, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), a state, or a political subdivision or instrumentality, including a municipal corporation of a state.

(75) "Entry" means initial enrollment to a Department-funded developmental disabilities service delivered by a provider agency or case management entity.

(76) "Exit" means termination or discontinuance of a Department-funded developmental disabilities service.

(77) "Family Member" means spouse, domestic partner, natural parent, child, sibling, adopted child, adoptive 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.

(78) "Founded Report" means the determination by the Department or Law Enforcement Authority (LEA), based on the evidence that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to the person alleged to have engaged in the conduct.

(79) "Functional Needs Assessment" means the comprehensive assessment or reassessment appropriate to the specific program in which an individual is enrolled that documents physical, mental, and social functioning.

(a) A functional needs assessment is:

(A) For community living supports as described in OAR chapter 411, division 450, the "functional needs assessment" as defined in OAR 411-450-0020.

(B) For 24-hour residential programs settings as described in OAR chapter 411, division 325, the Supports Intensity Scale, Adult Needs Assessment, or Children's Needs Assessment.

(C) For supported living programs as described in OAR chapter 411, division 328, the Adult Needs Assessment.

(D) For adult foster homes as described in OAR chapter 411, division 360, the Support Needs Assessment Profile, Adult Needs Assessment, or Children's Needs Assessment.

(b) The functional needs assessments are maintained by the Department at: <http://www.dhs.state.or.us/spd/tools/dd/cm/>.

(c) A printed copy of the assessment tools may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-2, Salem, OR 97301.

(80) "General Business Provider" means an organization or entity selected by an individual or their legal representative and paid with Department funds that:

(a) Is primarily in business to provide the service chosen by the individual or their legal representative to the general public.

(b) Provides services for the individual through employees, contractors, or volunteers.

(c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the individual.

(81) "Good Cause" means an excusable mistake, surprise, excusable neglect (which may include neglect due to a significant cognitive or health issue), circumstances beyond the control of a claimant, reasonable reliance on the statement of Department staff or an adverse provider relating to procedural requirements, [or due to] fraud, misrepresentation, or other misconduct of the Department or a party adverse to a claimant.

(82) "Guardian" means the parent for an individual under the age of 18, or a person or agency appointed and authorized by a court to make decisions about services for an individual.

(83) "Health Care Provider" means the person or health care facility licensed, certified, or otherwise authorized or permitted by Oregon law to administer health care in the ordinary course of business or practice of a profession. Examples of a health care provider include, but are not limited

to, a registered nurse (RN), nurse practitioner (NP), licensed practical nurse (LPN), medical doctor (MD), osteopathic physician (DO), chiropractor, respiratory therapist (RT), physical therapist (PT), physician assistant (PA), dentist, or occupational therapist (OT).

(84) "Health Care Representative" means:

(a) A health care representative as defined in ORS 127.505; or

(b) A person who has authority to make health care decisions for an individual under the provisions of OAR chapter 411, division 365.

(85) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0700, which results in a final order.

(86) "Home" means the primary residence for an individual that is not under contract with the Department to provide services certified as a foster home for children under OAR chapter 411, division 346, licensed as a foster home for adults under OAR chapter 411, division 360, or a licensed or certified residential care facility, assisted living facility, nursing facility, or other residential setting.

(a) A home for a child may include a foster home funded by Child Welfare.

(b) A foster home funded by Child Welfare is considered a provider owned, controlled, or operated residential setting.

(87) "Home and Community-Based Services" are services provided in the home or community of an individual.

(a) Home and community-based services are authorized under the following Medicaid authorities:

(A) 1915(c) — HCBS Waivers.

(B) 1915(i) — State Plan HCBS.

(C) 1915(k) — Community First Choice (K State Plan Option).

(b) Home and community-based services are delivered through the following program areas:

(A) Department of Human Services, Aging and People with Disabilities.

(B) Department of Human Services, Office of Developmental Disabilities Services.

(C) Oregon Health Authority.

(c) Home and community-based services may include alternative resources specifically authorized as home and community-based by the Department or Authority.

(88) "Home and Community-Based Setting" means a physical location meeting the qualities of OAR 411-004-0020 where an individual receives home and community-based services.

(89) "Hospital Level of Care" means a child:

(a) Has a documented medical condition and demonstrates the need for active treatment as assessed by the Clinical Criteria.

(b) The medical condition requires the care and treatment of services normally provided in an acute medical hospital.

(90) "IADL" means "instrumental activities of daily living".

(91) "ICF/ID" means "Intermediate Care Facility for Individuals with Intellectual Disabilities".

(92) "ICF/IID Level of Care" means an individual meets the following institutional level of care for an intermediate care facility for individuals with intellectual disabilities:

(a) The individual has an intellectual disability or a developmental disability as defined in this rule and meets the eligibility criteria in OAR 411-320-0080 for developmental disabilities services.

(b) The individual has a significant impairment in one or more areas of adaptive behavior as determined in OAR 411-320-0080.

(93) "IEP" means "Individualized Education Program".

(94) "Incident Report" means the written report of any injury, accident, act of physical aggression, use of protective physical intervention, or unusual incident involving an individual.

(95) "Independence" means the extent to which an individual exerts control and choice over their own life.

(96) "Independent Provider" means:

(a) A personal support worker; or

(b) An independent contractor delivering services including nursing services, discovery, job development, or behavior consultation.

(97) "Individual" means a child, young adult, or an adult, applying for, or determined eligible for, Department-funded developmental disabilities services.

(98) "Individualized Education Program" means the written plan of instructional goals and objectives developed in conference with an individual, their parent or legal representative (as applicable), teacher, and a representative of the public school district.

(99) "Individually-Based Limitations" means any limitation to the qualities outlined in OAR 411-004-0020(2)(c) to (2)(j), due to health and

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safety risks. An individually-based limitation is based on specific assessed need and only implemented with the informed consent of the individual or, as applicable, their legal representative, as described in OAR 411-004-0040.

(100) "Individual Support Plan" includes the written details of the supports, activities, and resources required for an individual to achieve and maintain personal outcomes and health and safety. The ISP is developed at least annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The ISP reflects services and supports that are important to meet the needs of the individual identified through a functional needs assessment as well as the preference of the individual for providers and the delivery and frequency of services and supports. The ISP is the plan of care for Medicaid purposes and reflects whether services are provided through a waiver, the Community First Choice state plan, natural supports, or alternative resources.

(101) "In-Home Expenditure Guidelines" mean the guidelines published by the Department that describe allowable uses for Department funds.

(a) The Department incorporates Version 6.0 of the In-home Expenditure Guidelines into these rules by this reference. The In-home Expenditure Guidelines are maintained by the Department at: <http://www.dhs.state.or.us/spd/tools/dd/cm/In-Home-Expenditure-Guidelines.pdf>.

(b) A printed copy may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-2, Salem, Oregon 97301.

(102) "Instrumental Activities of Daily Living" are the activities other than activities of daily living required to continue independent living as described in the Community First Choice state plan.

(103) "Intake" means the activity of completing the DD Intake Form (APD 0552) and necessary releases of information prior to the submission of a completed application to the CDDP.

(104) "Integrated Employment Setting" means employment at a location where an employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and that, as appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions. Employment in an Integrated Employment Setting cannot be facility-based work in a Sheltered Workshop, and cannot be non-work activities such as day support activities.

(105) "Integration" as defined in ORS 427.005 means:

(a) Use by individuals receiving developmental disabilities services of the same community resources used by and available to other people.

(b) Participation by individuals receiving developmental disabilities services in the same community activities in which people without disabilities participate, together with regular contact with people without disabilities.

(c) Residence by individuals receiving developmental disabilities services in homes or in home-like settings that are in proximity to community resources, together with regular contact with people without disabilities in their community.

(106) "Intellectual Disability" means significantly sub-average general intellectual functioning defined as full scale intelligence quotients (IQs) 70 and under as measured by a qualified professional and existing concurrently with significant impairment in adaptive behavior directly related to an intellectual disability as described in OAR 411-320-0080 that is manifested during the developmental period prior to 18 years of age. Individuals with a valid full scale IQ of 71-75 may be considered to have an intellectual disability if there is also significant impairment in adaptive behavior as diagnosed and measured by a licensed clinical or school psychologist as described in OAR 411-320-0080.

(107) "Involuntary Reduction" means a provider has made the decision to reduce services provided to an individual without prior approval from the individual.

(108) "Involuntary Transfer" means a provider has made the decision to transfer an individual without prior approval from the individual.

(109) "ISP" means "Individual Support Plan".

(110) "ISP Team" means a team composed of an individual receiving services and their legal or designated representative (as applicable), case manager, and others chosen by the individual, or as applicable their legal representative, such as providers and family members.

(111) "Legal Representative" means a person who has the legal authority to act for an individual. The legal representative only has authority to act within the scope and limits of their authority as designated by a court or other agreement. A legal representative acting outside of their authority or scope must meet the definition of designated representative.

(a) For an individual under the age of 18, the legal representative is the parent, unless a court appoints another person or agency to act as the guardian.

(b) For an individual 18 years of age or older, the legal representative is the guardian appointed by a court order or the legally designated health care representative, where the court order or the written designation provides authority for the appointed or designated person to make the decisions indicated where the term "legal representative" is used.

(112) "MAGI" means "Modified Adjusted Gross Income". "MAGI" is further defined in OAR 410-200-0015.

(113) "Mandatory Reporter":

(a) Means:

(A) Any public or private official as defined in ORS 419B.005 who comes in contact with a child with or without an intellectual or developmental disability and has reasonable cause to believe the child has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the child, regardless of whether or not the knowledge of the abuse was gained in the official capacity of the public or private official.

(B) Any public or private official as defined in ORS 430.735 who, while acting in an official capacity, comes in contact with an intellectual or developmental disability or mental illness and has reasonable cause to believe the adult has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the adult.

(C) Any public or private official as defined in ORS 124.050 who comes in contact with an older adult, age 65 and older, and has reasonable cause to believe the older adult has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the older adult.

(D) Any public or private official as defined in ORS 441.630 who comes in contact with a resident of a long-term care facility as defined in ORS 442.015 and has reasonable cause to believe the resident has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the resident.

(b) Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this definition, except that a psychiatrist, psychologist, clergy, attorney, or guardian ad litem appointed under ORS 419B.231 is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(114) "Mechanical Restraint" means any mechanical device, material, object, or equipment attached or adjacent to the body of an individual that the individual cannot easily remove or easily negotiate around that restricts freedom of movement or access to the body of the individual. Mechanical restraint is not:

(a) The use of acceptable infant safety products.

(b) The use of car safety systems, consistent with applicable state law for people without disabilities.

(c) Safeguarding equipment when ordered by a physician or health care provider and approved by the ISP team.

(115) "Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to a provider following the enrollment of the provider as described in OAR chapter 411, division 370.

(116) "Medicaid Performing Provider Number" means the numeric identifier assigned by the Department to an entity or person following the enrollment of the entity or person to deliver Medicaid funded services as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering provider for identification and billing purposes associated with service authorizations and payments.

(117) "Medicaid Title XIX Benefit Package" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b), excluding individuals receiving CHIP Title XXI benefits.

(118) "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.

(119) "Monitoring" means the periodic review of the implementation of services and supports identified in an Individual Support Plan or Annual Plan, and the quality of services delivered by other organizations.

(120) "Natural Support" means:

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(a) For a child, the parental responsibilities for the child and the voluntary resources available to the child from their relatives, friends, neighbors, and the community, that are not paid for by the Department.

(b) For an adult, the voluntary resources available to an adult from their relatives, friends, significant others, neighbors, roommates, and the community, that are not paid for by the Department.

(121) "Notice of Involuntary Reduction, Transfer, or Exit" means form APD 0719DD. This form is part of the AFH/DD Mandatory Written Notice of Exit or Transfer.

(122) "Notification of Planned Action" means form APD 0947. The Notification of Planned Action is the written decision notice issued to an individual in the event that a developmental disabilities service is denied, reduced, suspended, or terminated.

(123) "Nurse" means a person who holds a current license from the Oregon Board of Nursing as a registered nurse or licensed practical nurse pursuant to ORS chapter 678.

(124) "Nursing Facility Level of Care" means a child:

(a) Has a documented medical condition that demonstrates the need for active treatment as assessed by the Clinical Criteria as defined in OAR 411-300-0110.

(b) The medical condition requires the care and treatment of services normally provided in a nursing facility.

(125) "Nursing Service Plan" means the plan that is developed by a registered nurse based on an initial nursing assessment, reassessment, or an update made to a nursing assessment as the result of a monitoring visit.

(a) The Nursing Service Plan is specific to an individual and identifies their diagnoses and health needs and any service coordination, teaching, or delegation activities.

(b) The Nursing Service Plan is separate from the ISP as well as any service plans developed by other health professionals.

(126) "Nursing Tasks" mean the care or services that require the education and training of a licensed professional nurse to perform. Nursing tasks may be delegated.

(127) "OAAPI" means the Department of Human Services, Office of Adult Abuse Prevention and Investigation.

(128) "OAH" means "Office of Administrative Hearings".

(129) "OCCS" means "Office of Client and Community Services".

(130) "OCCS Medical Programs" means the medical programs under OCCS including, but not limited to, the MAGI Medicaid and CHIP programs described in OAR 410-200-0305 to 410-200-0510. "OCCS Medical Programs" is further defined in OAR 410-200-0015.

(131) "ODDS" means the Department of Human Services, Office of Developmental Disabilities Services.

(132) "Office of Client and Community Services" means the part of the Health Systems Division under the Oregon Health Authority.

(133) "OIS" means "Oregon Intervention System".

(134) "OHA" means "Oregon Health Authority".

(135) "OHP" means "Oregon Health Plan".

(136) "Older Adult" means an adult at least 65 years of age.

(137) "Oregon Health Authority" means the agency established in ORS chapter 413 that administers the funds for Titles XIX and XXI of the Social Security Act. The Oregon Health Authority is the single state agency for the administration of the medical assistance program under ORS chapter 414.

(138) "Oregon Intervention System" is the system of providing training of elements of positive behavior support and non-aversive behavior intervention. The Oregon Intervention System uses principles of pro-active support and describes the approved protective physical intervention techniques used in an emergency to maintain health and safety.

(139) "Oregon Supplemental Income Program-Medical" is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(140) "OSIPM" means "Oregon Supplemental Income Program-Medical".

(141) "Parent" means the biological parent, adoptive parent, or step-parent of a child. Unless otherwise specified, references to parent also include a person chosen by the parent or guardian to serve as their designated representative in connection with the provision of ODDS-funded supports.

(142) "Person-Centered Planning":

(a) Means a timely and formal or informal process driven by an individual, includes people chosen by the individual, ensures the individual directs the process to the maximum extent possible, and enables the individual to make informed choices and decisions consistent with 42 CFR 441.540.

(b) Person-centered planning includes gathering and organizing information to reflect what is important to and for the individual and to help:

(A) Determine and describe choices about personal goals, activities, services, providers, service settings, risks, and lifestyle preferences.

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources.

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(c) The methods for gathering information vary, but all are consistent with the cultural considerations, needs, and preferences of the individual.

(143) "Personal Agent" means a person who:

(a) Is a case manager for the provision of case management services.

(b) Is the person-centered plan coordinator for an individual as defined in the Community First Choice state plan.

(c) Works directly with individuals, and if applicable their legal or designated representatives and families, to provide or arrange for support services.

(d) Meets the qualifications set forth in OAR 411-415-0040.

(144) "Personal Support Worker":

(a) Means a person:

(A) Who has a Medicaid provider number.

(B) Who is hired or selected by an individual or their representative.

(C) Who receives money from the Department for the purpose of delivering services to the individual in the home or community of the individual.

(D) Whose compensation for providing services is provided in whole or in part through the Department.

(b) This definition of personal support worker is intended to be interpreted consistently with ORS 410.600.

(145) "Plan Year" means 12 consecutive months from the start date specified on an authorized ISP or Annual Plan.

(146) "Positive Behavioral Theory and Practice" means a proactive approach to behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention.

(b) Uses the least intrusive intervention possible.

(c) Ensures that abusive or demeaning interventions are never used.

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(147) "Prescription Medication" means any medication that requires a prescription from a physician before the medication may be obtained from a pharmacist.

(148) "Primary Caregiver" means:

(a) For a child, their parent, guardian, relative, or other non-paid parental figure that normally provides their direct care. In this context, the term parent or guardian may include a designated representative.

(b) For an adult, the person identified in an Individual Support Plan as providing the majority of services and support for an individual in the home of the individual.

(149) "Primary Care Provider" means the health care provider who delivers day-to-day comprehensive health care. Typically, the primary care provider acts as the first contact and principal point of continuing care for an individual within the health care system and coordinates other specialist care the individual may need.

(150) "Private Duty Nursing" means the State Plan nursing services described in OAR chapter 410, division 132 and OAR 411-300-0150 that are determined medically necessary to support a child or young adult in their home.

(151) "PRN (pro re nata)" means the administration of a medication to an individual on an "as needed" basis.

(152) "Productivity" as defined in ORS 427.005 means regular engagement in income-producing work, preferable competitive employment with supports and accommodations to the extent necessary, by an individual that is measured through improvements in income level, employment status, or job advancement or engagement by an individual in work contributing to a household or community.

(153) "Progress Note" means a written record of an action taken by a provider in the delivery of a service to support an individual. A progress note may also be a recording of information related to services, support needs, or circumstances of the individual that is necessary for the effective delivery of services.

(154) "Protection" means the necessary actions offered to an individual, as soon as possible, to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, or to safeguard the person, property, and funds of the individual.

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(155) "Protective Physical Interventions" are safety procedures utilized with an individual that assists in keeping the individual protected from harming themselves or others through supportive measures, as taught in the Oregon Intervention System.

(156) "Protective Services" mean the necessary actions offered to an individual, as soon as possible, to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, or to safeguard the person, property, and funds of the individual.

(157) "Provider" means a person, agency, organization, or business, approved by the Department or other appropriate agency and selected by an individual, or their designated or legal representative, to provide Department-funded services. The provider for a child may not also be the primary caregiver of the child.

(158) "Provider Agency" means a public or private community organization that delivers developmental disabilities services and is certified and endorsed by the Department under the rules in OAR chapter 411, division 323 or division 450, that:

(a) Is primarily in business to provide supports for individuals eligible to receive developmental disabilities.

(b) Provides supports for individuals through employees, contractors, or volunteers.

(c) Receives compensation to recruit, supervise, and pay the people who actually provides support for the individuals.

(159) "Provider Owned, Controlled, or Operated Setting" means:

(a) The provider is responsible for delivering home and community-based services to individuals in the setting and the provider:

(A) Owns the setting;

(B) Leases or co-leases the residential setting; or

(C) If the provider has a direct or indirect financial relationship with the property owner, the setting is presumed to be provider owned, controlled, or operated.

(b) A setting is not provider owned, controlled, or operated if the individual leases directly from a third party that has no direct or indirect financial relationship with the provider.

(c) When an individual receives services in the home of a family member, the home is not considered provider owned, controlled, or operated.

(160) "Psychotropic Medication" means a medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior including, but not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.

(161) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(162) "Relief Care" means the services provided on a periodic basis for the relief of, or due to the temporary absence of, a person normally available to provide supports to an individual. A unit of service of relief care is 24 hours. Relief care is available through the Community First Choice state plan.

(163) "Request for Service" means:

(a) Submission of a completed application for developmental disabilities services as described in OAR 411-320-0080;

(b) A written request for a new developmental disabilities service or provider; or

(c) A written request for a change in a developmental disabilities service currently provided.

(164) "Residency Agreement" means the written and legally enforceable agreement between a residential provider and an individual or their legal or designated representative, when the individual is receiving home and community-based services in a provider owned, controlled, or operated residential setting. The Residency Agreement identifies the rights and responsibilities of the individual and the residential provider and provides the individual protection from eviction substantially equivalent to landlord-tenant laws.

(165) "Residential Programs" means services delivered by the following:

(a) 24-hour residential programs described in OAR chapter 411, division 325.

(b) Adult foster homes described in OAR chapter 411, division 360.

(c) Supported living programs described in OAR chapter 411, division 328.

(d) Foster homes for children described in OAR chapter 411, division 346.

(166) "Residential Settings" means the location where individuals, who receive services from a residential program, live.

(167) "Restraint" means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal functioning of an individual.

(168) "Review" means a request for reconsideration of a decision.

(169) "Safeguarding Equipment" means a device used to provide support to an individual for the purpose of achieving and maintaining functional body position, proper balance, and protecting the individual from injury or symptoms of existing medical conditions.

(170) "School Aged" means the age at which an individual is old enough to attend kindergarten through high school.

(171) "Self-Administration of Medication" means an individual manages and takes their own medication, identifies their own medication and the times and methods of administration, places the medication internally in or externally on their own body without staff assistance upon written order of a physician, and safely maintains the medication without supervision.

(172) "Self-Determination" means a philosophy and process by which individuals with intellectual or developmental disabilities are empowered to gain control over the selection of services and supports that meet their needs. The basic principles of self-determination are:

(a) Freedom. The ability for an individual, together with freely-chosen family and friends, to plan a life with necessary services and supports rather than purchasing a predefined program.

(b) Authority. The ability for an individual, with the help of a social support network if needed, to control resources in order to purchase services and supports.

(c) Autonomy. The arranging of resources and personnel, both formal and informal, that assists an individual to live a life in a community rich in community affiliations.

(d) Responsibility. The acceptance of a valued role of an individual in the community through competitive employment, organizational affiliations, personal development, and general caring for others in the community, as well as accountability for spending public dollars in ways that are life-enhancing for the individual.

(173) "Self-Direction" means an individual, or as applicable their legal or designated representative, has decision-making authority over services and takes direct responsibility for managing services with the assistance of a system of available supports that promotes personal choice and control over the delivery of waiver and state plan services.

(174) "Sensory Impairment" means loss or impairment of sight or hearing from any cause, including involvement of the brain.

(175) "Service Agreement":

(a) Means the component of an ISP that is the written agreement for a particular provider that describes at a minimum, the following:

(A) The services authorized in an ISP to be delivered by the provider.

(B) Hours, rates, location of services, and expected outcomes of the services.

(C) Any specific individual health, safety, and emergency procedures that may be required, including action to be taken if an individual is unable to provide for their own safety and the individual is missing while in the community.

(b) For employed personal support workers, the Service Agreement serves as the written job description for Oregon Home Care Commission purposes.

(c) For non-personal support worker providers, the ISP serves as the Service Agreement, when signed by the provider.

(176) "Service Element" means a funding stream to fund developmental disabilities programs and services.

(177) "Service Record" means the combined information related to an individual.

(178) "Services Coordinator" means an employee of the Department, CDDP, or other agency that contracts with the county or Department, who provides case management services. A services coordinator acts as the proponent for individuals with intellectual or developmental disabilities and is the person-centered plan coordinator for the individual as defined in the Community First Choice state plan.

(179) "Setting" means the community-based location where services are delivered.

(180) "Sheltered Workshop" means a facility in which individuals with intellectual or developmental disabilities are congregated for the purpose of receiving employment services and performing work tasks for pay at the facility. A sheltered workshop primarily employs individuals with intellectual and developmental disabilities, or other disabilities, with the exception of service support staff. A sheltered workshop is a fixed site that is owned, operated, or controlled by a provider, where an individual has

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few or no opportunities to interact with individuals who do not have disabilities, not including paid support staff. A sheltered workshop is not small group employment in an integrated employment setting, and is not otherwise an integrated employment setting.

(181) "Skills Training" means the hourly service intended to increase the independence of an individual through training, coaching, and prompting the individual to accomplish ADL, IADL, and health-related tasks. Skills training is available through the Community First Choice state plan.

(182) "Social Benefit" means that developmental disabilities services are intended to assist an individual to function in society on a level comparable to that of a person who does not experience a developmental disability.

(a) Social benefits may not:

(A) Duplicate benefits and services otherwise available to a person regardless of disability.

(B) Replace normal parental responsibilities for the services, education, recreation, and general supervision of a child.

(C) Provide financial assistance with food, clothing, shelter, and laundry needs common to any person, except as described in OAR chapter 411, division 435 for transition services.

(D) Replace other governmental or community services available to an individual.

(b) Assistance provided as a social benefit is reimbursement for an expense previously authorized in an ISP.

(c) Assistance provided as a social benefit may not exceed the actual cost of the support required by an individual to be supported in the home of the individual.

(183) "Staff" means a paid employee who is responsible for providing services and supports to an individual and whose wages are paid in part or in full with funds sub-contracted with a Community Developmental Disabilities Program, Brokerage, or contracted directly through the Department.

(184) "Substantiated" means an abuse investigation has been completed by the Department, or the designee of the Department, and the preponderance of the evidence establishes the abuse occurred.

(185) "Support" means:

(a) For a child, the assistance the child and their family requires, solely because of the effects of a condition that makes the child eligible for developmental disabilities, to maintain or increase the age-appropriate independence of the child, achieve age-appropriate community presence and participation of the child, and to maintain the child in the family home. Support is subject to change with time and circumstances.

(b) For an adult, the assistance the adult individual requires, solely because of the effects of an intellectual or developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.

(186) "Transfer" means movement of an individual from one service setting to a different service setting, administered or operated by the same provider.

(187) "Transition-Age" means:

(a) Not older than 24 years of age.

(b) Not younger than 14 years of age. With respect to Vocational Rehabilitation Services, persons who are under 16 years of age may receive employment services with Department approval. With respect to ODDS, persons who are under 18 years of age may receive employment services with Department approval.

(188) "Unacceptable Background Check" means an administrative process that produces information related to the background of a person that precludes the person from being an independent provider for one or more of the following reasons:

(a) Under OAR 407-007-0275, the person applying to be an independent provider has been found ineligible due to ORS 443.004.

(b) Under OAR 407-007-0275, the person was enrolled as an independent provider for the first time, or after any break in enrollment, after July 28, 2009 and has been found ineligible due to ORS 443.004.

(c) A background check and fitness determination has been conducted resulting in a "denied" status as defined in OAR 407-007-0010.

(189) "Unusual Incident" means any incident involving an individual that includes serious illness or an accident, death, injury or illness requiring inpatient or emergency hospitalization, a suicide attempt, when an individual contacts the police or is contacted by the police, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring an abuse investigation.

(190) "Variance" means the temporary exemption from a regulation or provision of the rules granted by the Department upon written application.

(191) "Volunteer" means any person assisting a provider without pay to support the services and supports provided to an individual.

(192) "Workday" means 12:00 AM through 11:59 PM.

(193) "Working Age" means an individual aged 21 to 60. Working age also includes an individual 18 to 21 if the individual has left school.

(194) "Workweek" means 12:00 AM Sunday through 11:59 PM Saturday.

(195) "Written Outcome" means the written response from the Department or the local program to a complaint following a review of the complaint.

(196) "Young Adult" means a young individual aged 18 through 20.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.050

Hist.: APD 22-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 39-2014, f. 12-26-14, cert. ef. 12-28-14; APD 40-2014, f. 12-26-14, cert. ef. 12-28-14; APD 38-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16; APD 26-2016, f. & cert. ef. 6-29-16; APD 32-2016(Temp), f. 8-30-16, cert. ef. 9-1-16 thru 2-27-17; APD 5-2017, f. 2-21-17, cert. ef. 2-28-17; APD 8-2017(Temp), f. 4-14-17, cert. ef. 5-1-17 thru 10-27-17; APD 13-2017, f. & cert. ef. 6-5-17

Rule Caption: ODDS: Nursing Services in Adult Foster Homes for Individuals with Intellectual or Developmental Disabilities

Adm. Order No.: APD 14-2017

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Rules Amended: 411-360-0140

Rules Repealed: 411-360-0140(T)

Subject: The Department of Human Services, Office of Developmental Disabilities Services (ODDS) is permanently updating OAR 411-360-0140 relating to private duty nursing and direct nursing services in an adult foster home for individuals with intellectual or developmental disabilities (AFH-DD).

ODDS is updating OAR 411-360-0140 to make permanent the temporary changes that became effective on February 15, 2017. The proposed changes include the following:

- Removing the language limiting a Medicaid-enrolled direct nurse provider in an AFH-DD from delivering no more than 40 total hours per week of direct nursing services.

- Specifying that under OAR 410-132-0080 (Limitations for private duty nursing services), an AFH-DD provider is not authorized to deliver private duty nursing services.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-360-0140

Standards and Practices for Health Care

(1) INDIVIDUAL HEALTH CARE. An individual must receive care and services that supports and promotes the health and well-being of the individual as follows:

(a) The AFH-DD must ensure each individual has a primary physician or primary licensed health care provider whom the individual or the legal representative of the individual has chosen from among qualified providers.

(b) The AFH-DD must ensure each individual receives a medical evaluation by a licensed health care provider no less than every two years or as recommended by the licensed health care provider.

(c) The AFH-DD must monitor the health status and physical conditions of each individual and take action in a timely manner in response to identified changes or conditions that may lead to deterioration or harm.

(d) A written and signed order from a physician or licensed health care provider is required prior to the use or implementation of any of the following:

(A) Prescription medications;

(B) Non-prescription medications except over the counter topicals;

(C) Treatments other than basic first aid;

(D) Modified or special diets;

(E) Adaptive equipment; and

(F) Aids to physical functioning.

(e) The provider must implement the order of a physician or licensed health care provider.

(f) Injections may be:

(A) Self-administered by the individual; or

(B) Administered by:

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(i) A relative of the individual;
(ii) A currently licensed registered nurse;
(iii) A licensed practical nurse under registered nurse supervision; or
(iv) The provider, resident manager, or substitute caregiver who has been trained and is monitored by a physician or delegated by a registered nurse in accordance with the rules of the Board of Nursing in OAR chapter 851, divisions 045 and 047. Documentation regarding the physician training or registered nurse delegation must be maintained in the record for the individual.

(2) REQUIRED DOCUMENTATION.

(a) A provider must maintain and keep current records on each individual to aid physicians, licensed health care providers, the CDDP, and the Department in understanding the medical history of the individual. Such documentation must include:

(A) A list of known health conditions, medical diagnoses, any known allergies, immunizations, Hepatitis B status, previous TB tests, incidents or injuries affecting the health, safety, or emotional well-being of the individual, and history of emotional or mental health status that may be pertinent to current care and services;

(B) A record of visits and appointments to licensed health care providers that includes documentation of the consultation, any treatment provided, and any follow-up reports provided to the provider;

(C) A record of known hospitalizations and surgeries;

(D) Current signed orders for all medications, treatments, therapies, special diets, and adaptive equipment;

(E) Medication administration records (MARs);

(F) Documentation of the consent from the legal representative of the individual for medical treatment that is not routine, including surgery and anesthesia; and

(G) Copies of previous mental health assessments and assessment updates, including multi-axial DSM diagnosis, treatment recommendations, and progress records for mental health treatment services.

(b) When requested, copies of medical records and MARs must be provided to the legal representative, Department case manager, or services coordinator.

(3) MEDICATION PROCUREMENT AND STORAGE. All medications must be:

(a) Kept in the original containers;

(b) Labeled by the dispensing pharmacy, product manufacturer, or physician, as specified by the written order of a physician or licensed health care provider; and

(c) Kept in a secured, locked container and stored as indicated by the product manufacturer.

(4) MEDICATION ADMINISTRATION.

(a) All medications and treatments must be recorded on an individualized MAR. The MAR must include:

(A) The name of the individual;

(B) A transcription of the written order of the physician or licensed health care provider including the brand or generic name of the medication, prescribed dosage, frequency, and method of administration;

(C) For over the counter topical medications without a written order from a physician or licensed health care provider, a transcription of the printed instructions from the topical medication package;

(D) Times and dates of administration or self-administration of the medication;

(E) Signature of the person administering the medication or the person monitoring the self-administration of the medication;

(F) Method of administration;

(G) An explanation of why a PRN (as needed) medication was administered;

(H) Documented effectiveness of any PRN (as needed) medication administration;

(I) An explanation of all medication administration or documentation irregularities; and

(J) Documentation of any known allergy or adverse drug reaction.

(b) Any errors in the MAR must be corrected with a circle of the error and the initials of the person making the correction.

(5) SELF-ADMINISTRATION OF MEDICATION.

(a) For individuals who independently self-administer medications, there must be a plan as determined by the ISP team for the periodic monitoring and review of the self-administration of medications.

(b) The AFH-DD must ensure that individuals able to self-administer medications keep the medications in a place unavailable to other individuals residing in the AFH-DD and store the medications as recommended by the product manufacturer.

(6) USE OF MEDICAL MARIJUANA.

(a) Prior to using medical marijuana in an AFH-DD, an individual must:

(A) Possess a valid OMMP registry card. A copy of the current OMMP registry card for the individual must be made available to the provider and maintained in the record for the individual;

(B) Provide a copy of the written statement by the physician that indicates medical marijuana may mitigate the symptoms of the qualifying condition of the individual and includes instructions for the use of medical marijuana;

(C) Be responsible for obtaining the marijuana from an OMMP approved third party grower who is not the provider, caregiver, resident manager, or any other occupant in or on the premises of the AFH-DD; and

(D) Sign an agreement that the individual understands that:

(i) Marijuana is not allowed to be grown by any person in or on the premises of the AFH-DD;

(ii) A participant in the OMMP may not possess more than one ounce of marijuana at any one time while in or on the premises of the AFH-DD;

(iii) Medical marijuana may only be administered by ingesting it with food and by a vaporizer. If assistance with administration is necessary, the individual must agree to arrange for a "designated primary caregiver". The designated primary caregiver must be authorized by the OMMP and identified on the OMMP registry card for the individual;

(iv) A provider, caregiver, resident manager, or any occupants of the AFH-DD cannot be designated as the OMMP-approved designated primary caregiver of the individual and identified on the OMMP registry card for the individual;

(v) A provider, caregiver, resident manager, or any occupants of the AFH-DD cannot assist with the preparation, administration, or delivery of medical marijuana;

(vi) The individual must maintain any equipment used to administer marijuana;

(vii) Marijuana must be kept in locked storage in the bedroom of the individual when not being administered;

(viii) The individual must immediately notify the OMMP of any change in status, such as a change in address, designated primary caregiver, or person responsible for the marijuana grow site. A copy of the updated OMMP registry card for the individual must be made available to the provider for the record of the individual; and

(ix) Failure to comply with Oregon laws, Oregon rules, or the Residency Agreement of the AFH-DD may result in additional action.

(b) An individual must comply with the Oregon Medical Marijuana Act, the rules for the OMMP in OAR chapter 333, division 008, these rules, and any other requirements for the OMMP.

(c) An individual must self-administer medical marijuana by ingesting the marijuana or inhaling the marijuana with a vaporizer. Smoking marijuana in or on the premises of the AFH-DD is prohibited. Marijuana must be administered privately in a room that is not shared with another person. The individual may not have visitors, other individuals, or any other person in this private space while self-administering the marijuana.

(d) An individual must designate a grower to provide the marijuana as necessary. The grower must not be the provider, resident manager, caregiver, or any occupant in or on the premises of the AFH-DD. The grower designated by the individual must be authorized by OMMP and identified on the OMMP registry card for the individual.

(A) The designated grower for individuals being served in the foster care system must accommodate the specific needs related to the dispensation and tracking of the controlled substance. Not more than 28 grams at a time may be stored on the property of the AFH-DD per card holder. The remainder of the OMMP card holder's marijuana must be stored at the site of the grower.

(B) Each 28 grams, as needed, must be packaged in an airtight container clearly dated and labeled as to the total amount in grams with the name of the OMMP card holder. The container must be stored in a locked cabinet as is done with all controlled medications. Each administration must be tracked on the individual's MAR as to dosage in grams as weighed on a scale, date, and time of day.

(e) A provider, caregiver, resident manager, or any other occupants in or on the premises of the AFH-DD must not prepare or in any way assist with the administration or procurement of an individual's marijuana. The provider must monitor the individual's usage of medical marijuana to ensure safety and to document that the individual's use of medical marijuana is in compliance with the physician's instructions for using marijuana as documented in the ISP or Service Agreement.

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(f) If a provider, resident manager, or caregiver also has an OMMP card for medical purposes, a substitute caregiver must be available to support the individuals when the provider, resident manager, or caregiver is under the influence of the medical marijuana. Any OMMP card holder in or on the premises of the AFH-DD must not smoke marijuana in or on the premises of the AFH-DD but may ingest the marijuana or inhale the marijuana with a vaporizer.

(7) PSYCHOTROPIC MEDICATIONS.

(a) Psychotropic medications and medications for behavior must be:

(A) Prescribed by a physician or licensed health care provider through a written order; and

(B) Monitored by the prescribing physician or licensed health care provider, ISP team, and provider for desired responses and adverse consequences.

(b) A provider, resident manager, or any caregiver may not discontinue, change, or otherwise alter the prescribed administration of a psychotropic medication for an individual without direction from a physician or licensed health care provider.

(c) A provider, resident manager, or any caregiver may not use alternative medications intended to alter or affect mood or behavior, such as herbals or homeopathic remedies, without direction and supervision of a physician or licensed health care provider.

(d) PRN (as needed) psychotropic medication orders are not allowed.

(e) PSYCHOTROPIC MEDICATIONS FOR YOUNG ADULTS. A qualified mental health professional or a licensed health care provider must provide a mental health assessment prior to any young adult being prescribed one or more psychotropic medications or any antipsychotic medication.

(A) A mental health assessment is not required in the following situations:

- (i) In case of urgent medical need;
- (ii) For a change in the delivery system of the same medication;
- (iii) For a change in medication within the same classification;
- (iv) A one-time medication order given prior to a medical procedure;

or

(v) An anti-epileptic medication prescribed for a seizure disorder.

(B) When a mental health assessment is required, the provider must notify and inform the following of the need for a mental health assessment:

(i) The legal guardian of the young adult, or the case manager of the Department when the Department is the legal guardian of the young adult; and

(ii) The services coordinator.

(C) The required mental health assessment:

(i) Must be completed within three months prior to the prescription of a psychotropic medication; or

(ii) May be an update of a prior mental health assessment that focuses on a new or acute problem.

(D) Information from the mental health assessment must be provided to a physician or licensed health care provider prior to the issuance of a prescription for a psychotropic medication.

(E) Within one business day after receiving a new prescription or knowledge of a new prescription for a psychotropic medication for the young adult, the provider must notify:

(i) The legal guardian of the young adult, or the case manager of the Department when the Department is the legal guardian of the young adult; and

(ii) The services coordinator.

(F) The notification described in subsection (E) of this section must contain:

(i) The name of the prescribing physician or licensed health care provider;

(ii) The name of the medication;

(iii) The dosage, any change of dosage, or suspension or discontinuation of the current psychotropic medication;

(iv) The dosage administration schedule prescribed; and

(v) The reason the medication was prescribed.

(G) The provider must get a written informed consent from one of the following prior to filling a prescription for any new psychotropic medication, except in case of urgent medical need:

(i) The legal guardian of the young adult; or

(ii) The Department when the Department is the legal guardian of the young adult.

(H) When a young adult has more than two prescriptions for psychotropic medications, an annual review of the psychotropic medications must occur by a physician, licensed health care provider, or a qualified

mental health professional who has the authority to prescribe drugs, such as the Oregon Medicaid Drug Use Review Program.

(f) BALANCING TEST. When a psychotropic medication is first prescribed and annually thereafter, the provider must obtain a signed balancing test from the prescribing physician or licensed health care provider using the Balancing Test Form (form APD 4110), or by inserting the required form content into a form maintained by the provider.

(A) The provider must present the physician or licensed health care provider with a full and clear description of the behavior and symptoms to be addressed, as well as any side effects observed; and

(B) The provider must keep signed copies of the balancing test in the medical record for the individual for seven years.

(8) MEDICATION SAFEGUARDS.

(a) Safeguards to prevent adverse effects or medication reactions must be utilized and include:

(A) Whenever possible, obtaining all prescription medication for an individual, except samples provided by the physician or licensed health care provider, from a single pharmacy that maintains a medication profile for the individual;

(B) Maintaining information about each desired effects and side effects of the medication; and

(C) Ensuring that medications prescribed for one individual are not administered to, or self-administered by, another individual or caregiver.

(b) The record for an individual must include documentation of the reason when all medications are not provided through a single pharmacy.

(9) MEDICATION DISPOSAL. All unused, discontinued, outdated, recalled, and contaminated medications including over-the-counter medications may not be kept in the AFH-DD and must be disposed of within 10 days of expiration, discontinuation, or the knowledge of the provider of recall or contamination. A provider may contact the local Department of Environmental Quality waste management company in the area for instructions on proper disposal of medications. Disposal of all controlled medications must be documented and witnessed by at least one other person who is 18 years of age or older. A written record of the disposal of the medication must be maintained that includes documentation of:

(a) Date of disposal;

(b) Description of the medication, including dosage, strength, and amount being disposed;

(c) Name of the individual for whom the medication was prescribed;

(d) Reason for disposal;

(e) Method of disposal;

(f) Signature of the person disposing of the medication; and

(g) For controlled medications, the signature of a witness to the disposal.

(10) NURSING SERVICES.

(a) When nursing services are provided to an individual the provider must:

(A) Coordinate with the registered nurse and the ISP team to ensure that the nursing services being provided are sufficient to meet the health needs of the individual; and

(B) Implement the Nursing Service Plan, or appropriate portions therein, as agreed upon by the ISP team and registered nurse.

(b) COMMUNITY NURSING SERVICES. When community nursing services as described in OAR chapter 411, division 048 are provided to an individual, the foster care provider must:

(A) Coordinate with the registered nurse and the ISP team to ensure that the nursing services being provided are sufficient to meet the health needs of the individual; and

(B) Implement the Nursing Service Plan, or appropriate portions therein, as agreed upon by the ISP team and registered nurse.

(c) PRIVATE DUTY NURSING. Under OAR chapter 410, division 132, young adults aged 18 through 20 who reside in a foster home and who meet the clinical criteria described in OAR 411-300-0120 are eligible for private duty nursing services.

(A) A Nursing Service Plan must be present when Department funds are used for private duty nursing services. A services coordinator must authorize the provision of private duty nursing services as identified in an ISP.

(B) When private duty nursing services are provided to a young adult, the provider must:

(i) Coordinate with the registered nurse and the ISP team to ensure the private duty nursing services being delivered are sufficient to meet the health needs of the young adult; and

(ii) Implement the Nursing Service Plan, or appropriate portions therein, as agreed upon by the ISP team and registered nurse.

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(C) Under OAR 410-132-0080, an AFH-DD provider is not authorized to deliver private duty nursing services.

(d) **DIRECT NURSING SERVICES.** Direct nursing services may be provided to individuals 21 years of age and older as described in OAR chapter 411, division 380.

(A) A Nursing Service Plan must be present when Department funds are used for direct nursing services. A services coordinator must authorize the provision of direct nursing services as identified in an ISP.

(B) When direct nursing services are provided to an individual the provider must:

(i) Coordinate with the registered nurse and the ISP team to ensure the direct nursing services being provided are sufficient to meet the health needs of the individual;

(ii) Implement the Nursing Service Plan, or appropriate portions therein, as agreed upon by the ISP team and registered nurse; and

(iii) While delivering a direct nursing service exclusively to an eligible individual in the AFH-DD, assure the needs of other individuals in the home are met up to and including additional staffing, such as resident managers, substitute caregivers, or additional nurses in the home. Documentation must record staffing coverage.

(C) An AFH-DD provider licensed by the Department may provide direct nursing services to an individual in the AFH-DD under the following conditions:

(i) The provider must meet the qualifications to provide direct nursing services described in OAR 411-380-0060;

(ii) More than one individual resides in the AFH-DD;

(iii) The AFH-DD provider is the choice of the individual or the legal representative of the individual and is not for the convenience of the AFH-DD provider; and

(iv) The AFH-DD provider meets the requirements as an enrolled Medicaid Provider as described in OAR 411-380-0060 and has a separate and distinct Medicaid provider number.

(11) **DELEGATION AND SUPERVISION OF NURSING TASKS.** Nursing tasks must be delegated by a registered nurse to a provider, resident manager, and a substitute caregiver in accordance with the rules of the Oregon State Board of Nursing in OAR chapter 851, divisions 045 and 047.

Stat. Auth.: ORS 409.050, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790

Stats. Implemented: ORS 443.705 - 443.825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef. 2-1-05; SPD 13-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 34-2013, f. & cert. ef. 9-27-13; APD 29-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 47-2014, f. 12-26-14, cert. ef. 12-28-14; APD 30-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16; APD 21-2016, f. & cert. ef. 6-29-16; APD 1-2017(Temp), f. & cert. ef. 2-15-17 thru 8-13-17; APD 14-2017, f. & cert. ef. 6-9-17

Department of Human Services, Self-Sufficiency Programs Chapter 461

Rule Caption: Amending rule about eligibility of child care providers

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Notice Publication Date:

Rules Amended: 461-165-0180

Subject: OAR 461-165-0180-about the eligibility of child care providers is being amended to require approved child care providers to provide care within the state of Oregon, allowing the state to monitor compliance with its child safety requirements.

The rule text showing changes is available at http://www.dhs.state.or.us/policy/selfsufficiency/ar_temporary.htm.

Rules Coordinator: Robert Trachtenberg—(503) 947-5290

461-165-0180

Eligibility of Child Care Providers

(1) The Department must approve a child care provider to receive payment for child care if information available to the Department provides no basis for denying eligibility unless the Department determines, following a final fitness determination (see OAR 125-007-0260 and 407-007-0320) or Child Protective Service (CPS) records checks, that the provider or other subject individual (see OAR 125-007-0210 and 407-007-0210(8)(a)(J)) is not eligible for payment.

(2) Ineligibility for payment may result from any of the following:

(a) A finding of “denied”.

(A) A provider may be “denied” under OAR 461-165-0410 and 461-165-0420. If, after conducting a weighing test as described in OAR 407-007-0300, the Department finds substantial risk to the health or safety of a child (see OAR 461-001-0000) in the care of the provider, the provider must be “denied” and is ineligible for payment.

(B) A provider who has been “denied” has the right to a hearing under OAR 407-007-0335.

(b) A finding of “failed”.

(A) A provider may be “failed” if the Department determines, based on a specific eligibility requirement and evidence, that a provider does not meet an eligibility requirement of this rule not covered in paragraph (c)(A) of this section.

(B) While the provider is in “failed” status:

(i) The Department does not pay any other child care provider for child care at the “failed” provider’s site.

(ii) The Department does not pay a child care provider at another site if the “failed” provider is involved in the child care operation unless the Department determines that the reasons the provider is in “failed” status are not relevant to the new site.

(C) A provider with a status of “failed” may reapply at any time by providing the required documents and information to the Department for review.

(c) A finding of “suspended”.

(A) A provider may be “suspended” if the Department determines and provides notice that the provider does not meet an eligibility requirement in the following subsections and paragraphs of section (7) of this rule: (d), (e), (h), (i), (j), (k), (L), (o)(H), (o)(I), (o)(L), or (t) or in section (10) of this rule. A provider who has been “suspended” may challenge this status by requesting a contested case hearing subject to the requirements and limitations of OAR 461-025.

(B) While the provider is in “suspended” status:

(i) The provider is ineligible for payment for at least six months.

(ii) The Department does not pay any other child care provider for child care at the “suspended” provider’s site.

(iii) The Department does not pay a child care provider at another site if the “suspended” provider is involved in the child care operation unless the Department determines that the reasons the provider is in “suspended” status are not relevant to the new site.

(C) A provider with a status of “suspended” may be eligible for payments after the six month ineligibility period ends when the provider has been approved following reapplication, including providing the required documents and information to the Department for review.

(d) The Department has referred an overpayment against the provider for collection and the claim is unsatisfied.

(3) The provider must submit a completed Child Care Provider Listing Form (DHS 7494) to the Department within 30 calendar days from the date the Department issues the listing form to the client. The provider and each individual identified under section (4) of this rule must complete and sign the authorization for a records check through the Criminal History (CH) record system maintained by the Oregon State Police (OSP), Federal Bureau of Investigation (FBI), and the Child Protective Service (CPS) record system maintained by the Department and, if necessary, an authorization to release information and fingerprint cards. The provider, each individual described in section (4) of this rule, and each subject individual described in OAR 125-007-0210 and 407-007-0210(8)(a)(J) must fully disclose all requested information as part of the records check.

(4) This rule also establishes additional requirements for the following individuals:

(a) The site director of an exempt child care facility and each employee of the facility who may have unsupervised access to a child in care.

(b) The child care provider and each individual the provider uses to supervise a child in his or her absence.

(c) In the case of a provider who provides care for a child in the provider’s home:

(A) Each individual 16 years of age or older who lives in the provider’s home; and

(B) Each individual who visits the home of the provider during the hours care is provided and may have unsupervised access to a child in care.

(5) To receive payment or authorization for payment, the provider must comply with at least one of the following subsections:

(a) If the provider is not legally exempt (see section (11) of this rule):

(A) Be currently certified or registered with the Office of Child Care (OCC) of the Oregon Department of Education (ODE) under OAR 414-205-0000 to 414-205-0170, 414-300-0000 to 414-300-0440, or 414-350-0000 to 414-350-0250 and be in compliance with the applicable rules;

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- (B) Complete the Department's background check process;
- (C) Complete the Department's listing process; and
- (D) Be approved by the Department.
- (b) If the provider is legally exempt and a legally exempt relative (see section (11) of this rule):
 - (A) Complete the Department's background check process;
 - (B) Complete the Department's listing process; and
 - (C) Be approved by the Department.
- (c) If the provider is legally exempt and not a legally exempt relative for all children in care:
 - (A) Meet all OCC Regulated Subsidy Provider requirements under OAR 414-180-0005 through 414-180-0100;
 - (B) Submit to and pass a site visit at the location where care will be provided;
 - (C) Complete the Department's background check process;
 - (D) Complete the Department's listing process; and
 - (E) Be approved by the Department.
- (6) Each individual described in section (4) of this rule must:
 - (a) Allow the Department to conduct a national criminal history records check through the Oregon State Police and the Federal Bureau of Investigation as specified in OAR 407-007-0250.
 - (b) Provide, in a manner specified by the Department, information required to conduct CH, FBI, OSP, and CPS records checks and determine whether the provider meets health and safety requirements.
 - (c) Have a history of behavior that indicates no substantial risk to the health or safety of a child in the care of the provider.
 - (7) Each provider must:
 - (a) Obtain written approval from their certifier or certifier's supervisor if the provider is also certified as a foster parent.
 - (b) Be 18 years of age or older and in such physical and mental health as will not affect adversely the ability to meet the needs of safety, health, and well-being of a child in care.
 - (c) Not be in the same filing group (see OAR 461-110-0310 and 461-110-0350) as the child cared for; the parent (see OAR 461-001-0000) of a child in the filing group; or a sibling living in the home of a child in the filing group.
 - (d) Allow the Department to inspect the site of care while child care is provided.
 - (e) Keep daily attendance records showing the arrival and departure times for each child in care and billing records for each child receiving child care benefits from the Department. These written records must be retained for a minimum of 12 months and provided to the Department upon request.
 - (f) Be the individual or facility listed as providing the child care. The provider may only use someone else to supervise a child on a temporary basis if the person was included on the most current listing form and the provider notifies the Department's Direct Pay Unit.
 - (g) Not bill a Department client for an amount collected by the Department to recover an overpayment or an amount paid by the Department to a creditor of the provider because of a lien, garnishment, or other legal process.
 - (h) Report to the Department's Direct Pay Unit within five days of occurrence:
 - (A) Any arrest or conviction of any subject individual or individual described in section (4) of this rule.
 - (B) Any involvement of any subject individual or individual described in section (4) of this rule with CPS or any other agencies providing child or adult protective services.
 - (C) Any change to the provider's name or address including any location where care is provided.
 - (D) The addition of any subject individual or individual described in section (4) of this rule.
 - (E) Any reason the provider no longer meets the requirements under this rule.
 - (i) Report suspected child abuse of any child in his or her care to CPS or a law enforcement agency.
 - (j) Supervise each child in care at all times.
 - (k) Prevent any individual who behaves in a manner that may harm children from having access to a child in the care of the provider. This includes anyone under the influence (see section (11) of this rule).
 - (L) Allow the custodial parent of a child in his or her care to have immediate access to the child at all times.
 - (m) Inform a parent of the need to obtain immunizations for a child and have a completed, up-to-date Oregon shot record called the

- "Certification of Immunization Status" (CIS) form on file for each child in care.
 - (n) Take reasonable steps to protect a child in his or her care from the spread of infectious diseases.
 - (o) Ensure that the home or facility where care is provided meets all of the following standards:
 - (A) Each floor level used by a child has two usable exits to the outdoors (a sliding door or window that can be used to evacuate a child is considered a usable exit). If a second floor is used for child care, the provider must have a written plan for evacuating occupants in the event of an emergency.
 - (B) The home or facility has safe drinking water.
 - (C) The home or facility has a working smoke detector on each floor level and in any area where a child naps.
 - (D) Each fireplace, space heater, electrical outlet, wood stove, stairway, pool, pond, and any other hazard has a barrier to protect a child. Any gate or barrier may not pose a risk or hazard to any child in care.
 - (E) Any firearm, ammunition, and other items that may be dangerous to children, including but not limited to alcohol, inhalants, tobacco and e-cigarette products, matches and lighters, any legally prescribed or over-the-counter medicine, cleaning supplies, paint, plastic bags, and poisonous and toxic materials are kept in a secure place out of a child's reach.
 - (F) The building, grounds, any toy, equipment, and furniture are maintained in a clean, sanitary, and hazard free condition.
 - (G) The home or facility has a telephone in operating condition.
 - (H) No one may smoke or carry any lighted smoking instrument, including e-cigarettes or vaporizers, in the home or facility or within ten feet of any entrance, exit, window that opens, or any ventilation intake that serves an enclosed area, during child care operational hours or anytime child care children are present. No one may use smokeless tobacco in the home or facility during child care operational hours or anytime child care children are present. No one may smoke or carry any lighted smoking instrument, including e-cigarettes and vaporizers, or use smokeless tobacco in motor vehicles while child care children are passengers.
 - (I) No one may consume alcohol or use controlled substances (except legally prescribed and over-the-counter medications) or marijuana (including medical marijuana) on the premises (see section (11) of this rule) during child care operational hours or anytime child care children are present. No one under the influence of alcohol, controlled substances (except legally prescribed and over-the-counter medications) or marijuana (including medical marijuana) may be on the premises during child care operational hours or anytime child care children are present. No one may consume alcohol or use controlled substances (except legally prescribed and over-the-counter medications) or marijuana (including medical marijuana) in motor vehicles while child care children are passengers.
 - (J) Is not a half-way house, hotel, motel, shelter, or other temporary housing such as a tent, trailer, or motor home. The restriction in this paragraph does not apply to licensed (registered or certified) care approved in a hotel, motel, or shelter.
 - (K) Is not a structure:
 - (i) Designed to be transportable; and
 - (ii) Not attached to the ground, another structure, or to any utilities system on the same premises.
 - (L) Controlled substances (except lawfully prescribed and over-the-counter medications), marijuana (including medical marijuana, marijuana edibles, and other products containing marijuana), marijuana plants, derivatives, and associated paraphernalia may not be on the premises during child care operational hours or anytime child care children are present.
 - (p) Complete and submit a new listing form every two years, or sooner at the request of the Department, so that the Department may review the provider's eligibility.
 - (q) Provide evidence of compliance with the Department's administrative rules, upon request of Department staff.
 - (r) Comply with state and federal laws related to child safety systems and seat belts in vehicles, bicycle safety, and crib standards under 16 CFR 1219 and 1220.
 - (s) Place infants to sleep on their backs.
 - (t) Not hold a medical marijuana card; or distribute, grow, or use marijuana (including medical marijuana) or any controlled substance (except lawfully prescribed and over-the-counter medications).
 - (u) Develop and communicate expulsion and suspension policies to parents and caretakers.
 - (v) Provide care at a location within the state of Oregon.

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(8) Legally exempt providers must complete the “Introduction to Child Care Health and Safety” two-hour, web-based training as provided in the following subsections:

(a) Legally exempt providers with a list date prior to November 1, 2016, must complete the “Introduction to Child Care Health and Safety” training by June 30, 2017.

(b) Legally exempt providers with a list date of November 1, 2016 or later must complete the “Introduction to Child Care Health and Safety” prior to Department approval.

(9) Legally exempt providers must complete an orientation provided by the Department or a Child Care Resource and Referral agency within 90 days of being approved by the Department if he or she:

(a) Receives funds from the Department; and

(b) Begins providing child care services after June 30, 2010, or resumes providing child care services, after a break of more than one year that began after June 30, 2010.

(10) Child care providers and any individual supervising, transporting, preparing meals, or otherwise working in the proximity of child care children and those completing daily attendance and billing records shall not be under the influence.

(11) For purposes of these rules:

(a) “Premises” means the home or facility structure and grounds, including indoors and outdoors and space not directly used for child care.

(b) “Under the influence” means observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the individual has used alcohol, any controlled substances (including lawfully prescribed and over-the-counter medications), marijuana (including medical marijuana), or inhalants that impairs their performance of essential job function or creates a direct threat to child care children or others. Examples of abnormal behaviors include, but are not limited to hallucinations, paranoia, or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to slurred speech as well as difficulty walking or performing job activities.

(c) “Legally exempt” means the child care provider is exempt from licensing with the OCC because the provider is not subject to the licensing requirements under OAR 414-205-0000 to 414-205-0170, 414-350-000 to 414-350-0405 and 414-300-0000 to 414-300-0415.

(d) “Legally exempt relative” means a legally exempt provider who is a relative to all children in care including a great-grandparent, grandparent, aunt, uncle, or sibling not living in the home of any child in care.

(12) Legally exempt providers that are not a legally exempt relative to all children in care must meet all of the requirements in this section before approval by the Department, unless otherwise noted:

(a) Have an up-to-date, in-person infant and child CPR and first aid certification or have a currently valid waiver of this requirement from the Child Care Resource and Referral program.

(b) Complete the Recognizing and Reporting Child Abuse and Neglect (RRCAN) web-based training.

(c) Complete six hours of ongoing education in each two-year listing period as provided in this subsection. All trainings must be accepted by the Oregon Center for Career Development (OCCD) and be part of the OCCD’s 10 Core Knowledge Categories recognized by Oregon Registry Online to count toward the six hours.

(A) Two of the six hours must fall under the “Human Growth and Development” category; and

(B) Two of the six hours must cover “Understanding & Guiding Behavior”.

(13) Child care centers or programs that are legally exempt from certification or registration with the OCC, are located in a commercial or institutional facility, and receive payment from the Department on behalf of a family receiving a child care subsidy, may not exceed the following staff to children in care ratios:

(a) Six weeks through 23 months of age, the minimum number of staff to children is one to four. The maximum number of children in a group is eight.

(b) 24 months through 35 months of age, the minimum number of staff to children is one to five. The maximum number of children in a group is 10.

(c) 36 months of age to attending kindergarten, minimum number of staff to children is one to 10. The maximum number of children in a group is 20.

(d) Attending kindergarten and older, the minimum number of staff to children is one to 15. The maximum number of children in a group is 30.

(e) In a mixed-age group of children, the number of staff and group size shall be determined by the age of the youngest child in the group.

Stat. Auth.: ORS 181.537, 329A.500, 409.050, 411.060, 411.070

Stats. Implemented: ORS 181.537, 329A.340, 329A.500, 409.010, 409.050, 409.610, 411.060, 411.070, 411.122
Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 17-1994(Temp), f. & cert. ef. 8-15-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 2-1997, f. 2-27-97, cert. ef. 3-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 12-1997, f. & cert. ef. 8-25-97; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 13-2004, f. 4-29-04, cert. ef. 5-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 6-2005(Temp), f. & cert. ef. 4-25-05 thru 9-30-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 8-2013, f. & cert. ef. 4-1-13; SSP 5-2014(Temp), f. 2-4-14, cert. ef. 3-1-14 thru 8-28-14; SSP 10-2014(Temp), f. & cert. ef. 4-1-14 thru 8-28-14; SSP 15-2014, f. & cert. ef. 7-1-14; SSP 21-2014(Temp), f. & cert. ef. 8-13-14 thru 2-9-15; SSP 6-2015, f. 1-30-15, cert. ef. 2-1-15; SSP 17-2015, f. & cert. ef. 6-30-15; SSP 3-2016(Temp), f. & cert. ef. 1-20-16 thru 7-17-16; SSP 12-2016(Temp), f. & cert. ef. 3-14-16 thru 7-17-16; SSP 22-2016(Temp), f. & cert. ef. 5-23-16 thru 11-18-16; SSP 27-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 11-18-16; SSP 23-2016, f. 6-28-16, cert. ef. 7-1-16; SSP 29-2016, f. & cert. ef. 8-1-16; SSP 37-2016(Temp), f. 9-30-16, cert. ef. 10-1-16 thru 3-29-17; SSP 41-2016(Temp), f. & cert. ef. 11-1-16 thru 4-29-17; SSP 40-2016, f. & cert. ef. 11-1-16; SSP 45-2016, f. 12-20-16, cert. ef. 1-1-17; SSP 12-2017(Temp), f. & cert. ef. 6-1-17 thru 11-27-17

Rule Caption: Amending rules relating to self-sufficiency programs

Adm. Order No.: SSP 13-2017

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Rules Amended: 461-135-0485, 461-135-0491, 461-135-0493, 461-155-0180, 461-160-0430

Rules Repealed: 461-155-0180(T), 461-160-0430(T)

Subject: OAR 461-135-0485 about employability screening requirements for the Pre-TANF and TANF programs is being amended to add a second option for the employability screening tool so the rule accurately reflects the Department’s screening practices as it tests this new screening tool.

OAR 461-135-0491 about the Disaster Supplemental Nutrition Assistance Program (DSNAP) is being amended to define the term “household” to clarify these rules.

OAR 461-135-0493 about eligibility and benefit amounts for DSNAP is being amended to allow households in which a member worked in the disaster area at the time of the disaster to be eligible for DSNAP if they meet the other eligibility requirements. This change will align the rule with the state plan.

OAR 461-155-0180 about income standards used to determine eligibility in self-sufficiency programs is being amended to make permanent a temporary rule effective March 1, 2017 that updated the standards that apply 2017 federal poverty guidelines starting March 1, 2017.

OAR 461-160-0430 is being amended to make permanent a temporary rule change effective February 1, 2017 benefitting SNAP clients who are elderly or have disabilities by changing how the Department determines the medical deduction allowed for them, consistent with an approved waiver from the Food and Nutrition Service (FNS) so these clients qualify for additional food benefits to meet their needs. Under the amended rule, to determine the allowed deduction, the Department will first subtract \$35 from the total unreimbursed medical expenses. Then, for amounts between \$0.01 and \$170.01, \$170 will be deducted from income or, for amounts over \$170, the full cost amount will be deducted from income.

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461-135-0485

Requirement to Complete an Employability Screening and Overview of the Job Opportunity and Basic Skills (JOBS) Program; Pre-TANF and TANF

(1) As used in this rule:

(a) “Employability screening” means the DHS 7823A — Employability Screening Tool or the DHS 7823C — Family Assessment.

(b) “Overview of the JOBS program” means a discussion with the caretaker relative (see OAR 461-001-0000) in the need group (see OAR 461-110-0630) about the requirements and services provided under the JOBS program.

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(2) To be eligible for Pre-TANF and TANF benefits, the following must be completed prior to the end of the application processing time frames in OAR 461-115-0190:

(a) Each caretaker relative in the need group must complete an employability screening (see section (1) of this rule); and

(b) At least one caretaker relative in the need group must participate in an overview of the JOBS program (see section (1) of this rule).

(3) The employability screening and overview of the JOBS program must be offered during the initial eligibility intake for Pre-TANF and TANF program benefits.

Stat Auth.: ORS 409.050, 411.060, 411.070, 412.006, 412.049, 412.124
Stats Implemented: ORS 409.010, 411.060, 411.070, 412.006, 412.049, 412.064, 412.124
Hist.: SSP 26-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 15-2016, f. & cert. ef. 4-1-16; SSP 13-2017, f. 6-5-17, cert. ef. 7-1-17

461-135-0491

Disaster Supplemental Nutrition Assistance Program (DSNAP)

(1) OAR 461-135-0491 to 461-135-0497 apply only to the Disaster Supplemental Nutrition Assistance Program and only to a disaster benefit period and location authorized by the Food and Nutrition Service.

(2) The regular SNAP program continues to operate during a disaster benefit period and continues to process applications and make eligibility determinations in the normal manner.

(3) The following definitions apply to OAR 461-135-0491 to 461-135-0497:

(a) "DSNAP" refers to the Disaster Supplemental Nutrition Assistance Program.

(b) "FNS" refers to the Food and Nutrition Services, United States Department of Agriculture.

(c) "Household" refers to all individuals living and sharing food together at the time of the disaster who choose to apply together.

Stat. Auth.: ORS 411.816
Stats. Implemented: ORS 411.816
Hist.: SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 13-2017, f. 6-5-17, cert. ef. 7-1-17

461-135-0493

Eligibility and Benefit Amount for DSNAP

(1) To be eligible for emergency SNAP assistance during a disaster, a household (see OAR 461-135-0491) must meet all the following criteria:

(a) At the time the disaster struck, the household must have resided or a member of the household must have worked within the geographical area authorized by Food and Nutrition Services (FNS) for disaster procedures. The household may be certified for emergency SNAP assistance even if at the time of application it is occupying temporary accommodations outside the disaster area. However, the representative of the household must be present at the disaster certification site to be certified for DSNAP assistance.

(b) The household must purchase food during the disaster period authorized by FNS. A household residing in a temporary shelter but not expected to remain in the shelter for the entire benefit period is eligible for DSNAP program benefits.

(c) The household must have experienced at least one of the following adverse effects due to the disaster:

(A) Loss or inaccessibility of income involving a reduction or termination of income or a significant delay in receipt of income. This effect could occur if the disaster has caused a place of employment to close or reduce its work days, if pay checks or other payments are lost or destroyed, or if there is a significant delay in the issuance of pay checks or other payments. This effect could also occur if the work location is inaccessible due to the disaster.

(B) Inaccessibility of liquid resources. The household is unable to reach its cash resources and is not expected to be able to access its liquid resources for most of the disaster benefit period authorized by FNS. This inaccessibility may occur because the financial institutions where the household has its resources are closed due to the disaster.

(C) Loss of food.

(D) Real property damage. Damage to or destruction of the home or self-employment business of the household.

(2) To be eligible for emergency SNAP assistance during a disaster, the take-home pay of the household for the disaster benefits period authorized by FNS, plus its cash resources (cash on hand and accessible funds in checking and savings accounts), less disaster-related expenses, must be less than or equal to the DSNAP income standard for the size of the household.

(a) For DSNAP, take-home pay includes all of the following to the extent accessible during the benefit period:

(A) The wages a household actually receives after taxes and other payroll withholdings are taken out.

(B) The assistance payment or other unearned income a household received.

(C) Self-employment income earned after taxes for personal income and social security as well as costs of producing the self-employment income are subtracted. Allowable costs of producing the self-employment income are described in OAR 461-145-0920, 461-145-0930, and 461-145-0931.

(b) For DSNAP, disaster-related expenses include expenses the household has paid or is expected to pay for one of the following expenses during the disaster benefit period authorized by FNS if full reimbursement is not expected during this disaster benefit period. If the household has received or reasonably anticipates receiving a reimbursement for part or all of the expense during the disaster benefit period, only the net expense to the household is deductible. An expense charged to a credit card is not an allowable expense if the credit card bill is paid after the disaster benefit period. No expenses are considered other than the following:

(A) Expenses to repair damages to the home or other property of the household essential to the employment or self-employment of a household member;

(B) Expenses for temporary shelter during evacuation or if the home of the household is not livable or if the household cannot reach its home;

(C) Expenses related to protecting property from disaster damage, including payment for the packing and storage of the items;

(D) Expenses to clean up the home or business following the disaster;

(E) Expenses related to replacing necessary personal and household items, such as clothing, appliances, tools, and educational materials;

(F) Medical expenses for disaster-related injury to a person who was a household member at the time of the disaster (including funeral and burial expenses in the event of death);

(G) Expenses to repair a vehicle damaged in the disaster;

(H) Pet boarding fees when a pet must be placed in boarding due to a disaster; and

(I) Dependent care expenses incurred during the disaster.

(3) If the disaster benefit period is one month:

(a) Income over that full month period and all accessible resources are counted;

(b) Disaster-related expenses (described in subsection (2)(b) of this rule) paid, or expected to be paid over that full month period, are deducted; and

(c) The maximum income limit is for a one-month period.

(4) If the disaster benefit period is for one-half month:

(a) Income over the half-month period and all accessible resources are counted;

(b) Disaster-related expenses (described in subsection (2)(b) of this rule) paid, or expected to be paid over this period, are deducted; and

(c) The disaster eligibility limit is one-half of the monthly SNAP maximum limit.

(5) The full amount of accessible cash resources must be counted, regardless of the length of the disaster benefit period.

(6) No DSNAP program benefits are authorized after the expiration of the period for which the Department is authorized by FNS to process and approve applications for this emergency SNAP assistance.

(7) A household determined eligible must receive benefits no later than three days after the date of application. If the third day falls on a weekend or holiday, benefits must be issued on either:

(a) The second day; or

(b) The first day if the second day is also a weekend or holiday.

Stat. Auth.: ORS 411.816
Stats. Implemented: ORS 411.816

Hist.: SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 13-2007(Temp), f. & cert. ef. 12-17-07 thru 12-31-07, Administrative Correction 1-24-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 13-2017, f. 6-5-17, cert. ef. 7-1-17

461-155-0180

Income Standards; Not OSIP, OSIPM, QMB

(1) A Department program may cite this rule if the program uses a monthly income standard based on the federal poverty level or state median income. The standards in this rule are effective as of March 1, 2017.

(2) A monthly income standard set at 100 percent of the 2016 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.:]

(3) A monthly income standard set at 130 percent of the 2016 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.:]

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(4) A monthly income standard set at 185 percent of the 2017 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(5) A monthly income standard set at 200 percent of the 2016 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(6) A monthly income standard set at 250 percent of the 2017 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(7) A monthly income standard set at 350 percent of the 2016 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(8) A monthly income standard set at 85 percent of the 2017 state median income is set at the following amounts: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.
Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816, 412.014, 412.049
Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.816, 412.014, 412.049
Hist.: SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 1-2007, f. & cert. ef. 1-24-07; SSP 1-2008(Temp), f. & cert. ef. 1-24-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 1-2009, f. & cert. ef. 1-27-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 4-2010, f. & cert. ef. 3-31-10; SSP 25-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 1-2011(Temp), f. & cert. ef. 1-20-11 thru 7-19-11; SSP 17-2011, f. & cert. ef. 7-1-11; SSP 2-2012, f. & cert. ef. 1-25-12; SSP 3-2013, f. & cert. ef. 1-30-13; SSP 5-2013(Temp), f. & cert. ef. 2-1-13 thru 7-31-13; SSP 13-2013, f. & cert. ef. 7-1-13; SSP 22-2013(Temp), f. & cert. ef. 8-23-13 thru 2-19-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 2-2014, f. 1-31-14, cert. ef. 2-1-14; SSP 7-2015, f. 1-30-15, cert. ef. 2-1-15; SSP 23-2015, f. 9-28-15, cert. ef. 10-1-15; SSP 15-2016, f. & cert. ef. 4-1-16; SSP 4-2017(Temp), f. 2-28-17, cert. ef. 3-1-17 thru 8-27-17; SSP 13-2017, f. 6-5-17, cert. ef. 7-1-17

461-160-0430 Income Deductions; SNAP

(1) Deductions from income are subtracted from countable (see OAR 461-001-0000) income (see OAR 461-140-0010) in the following order to determine adjusted income (see OAR 461-001-0000) for the SNAP program:

(a) An earned income deduction of 20 percent of countable earned income. The 20 percent deduction is not taken from the wages funded by grant diversions such as Work Supplementation wages.

(b) A standard deduction of:

(A) \$157 per month for a benefit group (see OAR 461-110-0750) of one, two, or three individuals.

(B) \$168 per month for a benefit group of four individuals.

(C) \$197 per month for a benefit group of five individuals.

(D) \$226 per month for a benefit group of six or more individuals.

(c) A dependent care deduction for dependent care costs billed to a member of the filing group (see OAR 461-110-0370) and not paid for through any other program of the Department. For the cost to be deductible under this section, the care must be necessary to enable a member of the filing group to:

(A) Accept or continue employment;

(B) Seek employment, including a job search that meets the requirements of a case plan (see OAR 461-001-0020); or

(C) Attend vocational or educational training. A student receiving educational income is entitled to a deduction only for costs not excluded from educational income by OAR 461-145-0150.

(d) The medical deduction for elderly (see OAR 461-001-0015) individuals and individuals who have a disability (see OAR 461-001-0015) in the filing group. The deduction is calculated by determining the total of their deductible medical costs (see OAR 461-160-0415) and subtracting \$35. The Department uses the resulting amount to determine the allowable deduction as follows:

(A) For an amount less than \$0, no deduction is allowed.

(B) For an amount greater than \$0 but less than \$170.01, a deduction of \$170 is allowed.

(C) For an amount greater than \$170, a deduction of the amount determined under this subsection is allowed.

(e) A deduction for child support payments (including cash medical support) a member of the filing group makes under a legal obligation to a child (see OAR 461-001-0000) not a member of the filing group, including payments for the current month and for payments on arrearages. Child support is not deductible if collected by setoff through the Oregon Department of Revenue or by interception of a federal tax refund.

(f) A shelter deduction, calculated as follows:

(A) For SNAP filing group members required to pay room and board in a nonstandard living arrangement (see OAR 461-001-0000), the shelter deduction is:

(i) The cost of room and board, minus the payment standard for the benefit group; or

(ii) The actual room cost, if the individual can prove that the room cost exceeds the cost described in subparagraph (i) of this paragraph.

(B) For all other filing group members, the shelter deduction is calculated as follows:

(i) The standard deduction and the deductions of earned income, dependent care, court-ordered child support, and medical expenses are subtracted from countable income. Fifty percent of the remainder is subtracted from the shelter cost calculated in accordance with OAR 461-160-0420.

(ii) The rounded balance is the deduction, except the deduction is limited if the filing group has no member who has a disability or is elderly. The limit is \$517 per month.

(2) If a filing group member cannot verify a medical or court-ordered child-support expense or cannot verify any other expense when asked to do so, the unverified expense is not used to calculate the deduction. If the individual provides verification, the deduction is applied when calculating the next month's benefits. If verification is provided within the period authorized for processing applications (see OAR 461-115-0210), the benefits for the initial month (see OAR 461-001-0000) are recalculated using the deduction.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816
Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.816, 411.825, 411.837
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1995(Temp), f. 10-30-95, cert. ef. 11-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 31-1996, f. & cert. ef. 9-23-96; AFS 41-1996(Temp), f. & cert. ef. 12-31-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 15-1998(Temp), f. 9-15-98, cert. ef. 10-1-98 thru 10-31-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 23-2000(Temp), f. 9-29-00, cert. ef. 10-1-00 thru 12-31-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 23-2000(Temp) Suspended by AFS 28-2000(Temp), f. 10-31-00, cert. ef. 11-1-00 thru 12-31-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 3-2001, f. 2-27-01, cert. ef. 3-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 39-2010(Temp), f. & cert. ef. 11-4-10 thru 5-3-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 43-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 4-30-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 8-2013, f. & cert. ef. 4-1-13; SSP 24-2013, f. & cert. ef. 10-1-13; SSP 24-2014, f. & cert. ef. 10-1-14; SSP 28-2015, f. 9-29-15, cert. ef. 10-1-15; SSP 35-2016, f. 9-30-16, cert. ef. 10-1-16; SSP 1-2017(Temp), f. & cert. ef. 2-1-17 thru 7-30-17; SSP 13-2017, f. 6-5-17, cert. ef. 7-1-17

Rule Caption: Amending rules relating to APD medical program eligibility

Adm. Order No.: SSP 14-2017

Filed with Sec. of State: 6-5-2017

Certified to be Effective: 7-1-17

Notice Publication Date:

Rules Adopted: 461-145-0285, 461-145-0348

Rules Amended: 461-120-0010, 461-120-0345, 461-120-0350, 461-135-0832, 461-135-0835, 461-145-0040, 461-145-0050, 461-145-0108, 461-145-0110, 461-145-0145, 461-145-0150, 461-145-0210, 461-145-0240, 461-145-0320, 461-145-0435, 461-145-0440, 461-145-0460, 461-145-0510, 461-145-0520, 461-155-0580, 461-155-0600, 461-155-0620, 461-155-0630, 461-155-0670, 461-155-0688, 461-160-0551, 461-160-0590, 461-160-0620, 461-160-0780, 461-165-0030

Rules Repealed: 461-155-0551, 461-155-0640, 461-170-0120, 461-135-0832(T), 461-135-0835(T), 461-155-0670(T)

Subject: OAR 461-120-0010 about residency requirements is being amended to state that an individual is considered a resident in the OSIPM and QMB programs if the individual entered Oregon with a job commitment or looking for work, and is not receiving benefits from another state.

OAR 461-120-0345 about pursuit of healthcare and cash medical support and OAR 461-120-0350 about good cause for not complying with requirements to pursue child support, health care coverage, and medical support are being amended to clarify that the requirement to actually assign the rights and pursue healthcare/cash med-

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ical support applies only to the individuals who can legally assign right of themselves or others, not the person whose rights that individual can legally assign who cannot legally assign his or her own rights (such as a child, for example). These amendments also clarify that those whose rights must be assigned do not have to be in the OSIPM or QMB filing group, rather, rights must be assigned for anyone receiving any type of Medicaid under the state plan. These amendments distinguish between who actually has to assign to stay eligible for OSIPM and QMB, and whose rights that person must assign. The responsibility to pursue health insurance and cash medical support is based on who is legally able to assign rights for whom. OAR 461-120-0345 is also being amended to support current practices by adding the QMB programs. These amendments align the Department with federal policy and prepare the Department for the implementation of Integrated Eligibility.

OAR 461-135-0832 and OAR 461-135-0835 about limits on estate claims and definitions used in estate administration rules are being amended to make permanent temporary rule changes effective February 13, 2017 and implement an adverse Oregon Supreme Court decision by amending the definition of “estate” with respect to the collection of payments for assistance provided and limit when the Department collects against the spouse of a recipient. OAR 461-135-0835 about limits on estate claims is also being amended to remove the word “probate” from the definition of “probate estate” to bring the rule in line with ORS 416.350 which directs recovery against the “estate” of a spouse of the Medicaid recipient under certain circumstances.

OAR 461-145-0040 about burial arrangements and burial funds is being amended to clarify the rule and make it consistent with federal manual sections on the topic.

OAR 461-145-0050 about burial spaces and merchandise is being amended to revise when the cost of these items provides an exclusion from client assets considered in determining eligibility. These changes clarify the rule and make the policy consistent with federal law and manuals on the topic.

OAR 461-145-0108 about dividends, interest and royalties is being amended to add for the OSIP, OSIPM and QMB programs how dividends and interest income is treated. This amendment also establishes and clarifies how royalty income is treated in the OSIP, OSIPM, and QMB programs, and clarifies that royalties include compensation paid to the owner for the use of property, usually copyrighted material or natural resources, such as coal, oil, or natural gas. These amendments bring the Department into compliance with federal manuals on this topic.

OAR 461-145-0110 about the effect on eligibility of payments under the Domestic Volunteer Services Act (VISTA, RSVP, SCORE, ACE) is being amended to clarify when payments under Title I of the Domestic Volunteer Services Act of 1973 are excluded for the OSIP, OSIPM, and QMB programs, bring the rule into compliance with federal guidance in the SSA POMS at SI 00830.610.

OAR 461-145-0145 about educational accounts is being amended to add APD medical programs and their treatment of this asset type to the rule.

OAR 461-145-0150 about educational income is being amended to state an exclusion for certain VA educational benefits and clarify how other types of education income are treated, aligning APD medical programs with current federal policy.

OAR 461-145-0210 about the effects of gifts and winnings on eligibility is being amended to change how these items are treated. Under these amendments, the value of a gift card or certificate is income in the month it is received if the gift card or certificate can be used to purchase food or shelter or can be resold (with a rebuttable presumption that the gift card or certificate can be resold). In the OSIP, OSIPM, and QMB programs, if an individual is offered a choice between an in-kind item and cash, the cash amount is considered unearned income regardless of how the individual chooses to take the item; and gambling losses are not subtracted from gam-

bling winnings in determining the individual’s countable income. These changes are intended to comply with federal guidance on these topics.

OAR 461-145-0240 about income-producing sales contracts and OAR 461-145-0460 about sale of a resource are being amended to remove the provisions that apply to treatment of these assets that originate prior to October 12, 2012. These changes are intended to streamline eligibility processes.

OAR 461-145-0285 about Japanese-American restitution payments is being adopted to establish for the OSIP, OSIPM and QMB programs that Japanese-American restitution payments are excluded from income and resources. This rule also establishes how income is treated for payments to a survivor, that restitution payments from the Canadian Government are excluded income, and that interest earned on unspent Japanese-American and Japanese-Canadian restitution payments is excluded from income and resources. This rule is being adopted to follow federal law.

OAR 461-145-0320 about life insurance is being amended to state that burial insurance that generates a cash surrender value is treated in the same manner that this rule treats life insurance. This rule is also being amended to state that when the ownership or beneficiary of a life insurance policy has been irrevocably assigned and designated for burial, it is treated in accordance with OAR 461-145-0040 and not counted towards the \$1500 life insurance limit. This amendment also states when the face value of term life insurance policies are not counted in determining if the life insurance exclusion limit is exceeded.

OAR 461-145-0348 about mineral rights is being adopted to define this term and explain how the Department treats mineral rights property and income generated from mineral rights when determining eligibility. This rule aligns the Department with federal guidance.

OAR 461-145-0435 about the effect of refunds on eligibility decisions is being amended to cover the treatment of rebates and fill in gaps that currently exist in treatment of different types of refunds and rebates for APD programs, based on federal policy.

OAR 461-145-0440 about the effect of reimbursements on eligibility decisions is being amended to indicate that a reimbursement for an item already covered by benefits is counted as unearned income. This clarifies the rule and complies with federal law.

OAR 461-145-0510 about the effect of SSI benefits in the determination of eligibility is being amended to set out the policy of the Department about how to treat SSI when the SSI recipient is in the financial group of an individual not assumed eligible. This amendment aligns with federal policy, prepares the Department for the implementation of Integrated Eligibility, and supports current practices.

OAR 461-145-0520 about stocks, bonds, and other securities is being amended to state that in the OSIPM and QMB-DW programs, the value of a savings bond issued by the United States Department of the Treasury is excluded during the minimum retention period. This amendment also clarifies for all other programs, the value of a savings bond issued by the United States Department of the Treasury is excluded during the minimum retention period if the owner has received a denial of a request for a hardship waiver based on financial need. These amendments align the Department with federal policy.

OAR 461-155-0551 about special needs payments for home adaptations to accommodate a client’s physical condition is being repealed to prevent duplication of rules.

OAR 461-155-0580 about special need allowances for laundry, OAR 461-155-0600 about special need payments for home repairs, OAR 461-155-0620 about property taxes, OAR 461-155-0630 about community based care, OAR 461-155-0670 about special diet allowances, OAR 461-155-0688 about drug co-pay coverage, and OAR 461-160-0551 about income deductions are being amended to use terms more consistently with other rules, making them easier to follow. OAR 461-155-0600 is also being amended to state that the home adaptations covered must be performed by a licensed and bond-

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ed contractor. OAR 461-155-0670 is also being amended to indicate that the rule does not apply to the OSIP program, that special diet allowances must be reauthorized on an annual basis (instead of reviewed at 6-month intervals), and clarify statements about the amount of the special diet allowance adopted by temporary rule effective April 1, 2017.

OAR 461-155-0640 about restaurant meals is being repealed because the rule is not needed.

OAR 461-160-0590 about assessment of resources and the community spouse provision for the OSIP and OSIPM programs is being amended to state that either the community spouse or the institutional spouse has a right to an administrative hearing, clarify which issues surrounding the resource assessment process are hearable, and clarify the requirements that apply to properly submit such hearing requests.

OAR 461-160-0620 about income deductions and client liability for long-term care services and waived services is being amended to update the minimum community spouse income allowance (Minimum Monthly Maintenance Needs Allowance or MMMNA) and the community spouse monthly housing allowance which are published by the federal government each year. This amendment keeps Oregon in line with current federal standards for Department Medicaid programs and changes to the MMMNA and community spouse monthly housing allowance under the Spousal Impoverishment laws.

OAR 461-160-0780 about determining adjusted income for the OSIP-EPD and OSIPM-EPD programs is being amended to indicate that countable earned income (not gross earned income) is used in the process of reaching adjusted income. This change aligns the rule with current practices.

OAR 461-165-0030 about concurrent and duplicate benefits is being amended to correct an inadvertent omission of MAGI Child to the programs that may coexist with Medicare Savings Programs. This rule is also being amended to state that the QMB-DW and QMB-SMF programs may not coexist with other Medicaid programs, aligning this rule with OAR 461-135-0730.

OAR 461-170-0120 about monthly change reports is being repealed because this rule is no longer needed.

Rules Coordinator: Robert Trachtenberg — (503) 947-5290

461-120-0010

Residency Requirements

(1) To be eligible for benefits, an individual must be a resident of Oregon.

(2) Except as provided otherwise in OAR 461-120-0030 and this rule, an individual is a resident of Oregon if the individual lives in Oregon.

(3) There is no minimum amount of time an individual must live in Oregon to be a resident. However, the individual must intend to remain in Oregon except in the following situations:

(a) EA may be issued to help an individual return to a former state of residence.

(b) In the OSIPM, QMB, and REFM programs, when an individual is presumed incapable of forming an intent to reside under OAR 461-120-0050.

(c) In the OSIPM, QMB, REF, and TANF programs, an individual is considered a resident if the individual entered Oregon with a job commitment or looking for work, and is not receiving benefits from another state.

(d) The SNAP program does not require intent to remain to establish residency.

(e) In the TA-DVS program, to the extent permitted under OAR 461-135-1200.

(4) An individual is not a resident if the individual is in Oregon solely for a vacation.

(5) An individual continues to be a resident of Oregon during a temporary period of absence if the individual intends to return when the purpose of the absence is completed; and, in the TANF program, the individual remains in the household group under OAR 461-110-0210.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.006, 412.014, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.117, 411.404, 411.706, 411.816, 412.006, 412.014, 412.049, 413.085, 414.025, 414.033, 414.685, 414.826, 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 39-2009(Temp), f.

12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 9-2012, f. 3-29-12, cert. ef. 4-1-12; SSP 15-2014, f. & cert. ef. 7-1-14; SSP 17-2015, f. & cert. ef. 6-30-15; SSP 24-2015, f. 9-29-15, cert. ef. 10-1-15; SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-120-0345

Clients Required to Obtain Health Care Coverage and Cash Medical Support; OSIPM, QMB

This rule explains the obligation of individuals applying for or receiving benefits under the OSIPM or QMB programs to obtain health care coverage and cash medical support for any individual receiving Medicaid under the state plan for which the individual can legally assign rights (see OAR 461-120-0310).

(1) Unless excused from the requirements of subsection (d) of this section or for good cause defined in OAR 461-120-0350:

(a) Individuals must cooperate with the Department and the Division of Child Support of the Department of Justice in establishing the identity of the parents (see OAR 461-001-0000) of any child (see OAR 461-001-0000) receiving Medicaid under the state plan for which the individual can legally assign rights.

(b) Individuals must cooperate with obtaining cash medical support.

(c) Each individual must make a good faith effort to obtain available coverage under Medicare. In the OSIPM program, the applicant is not required to enroll in Medicare Part A coverage if all of the following are true:

(A) The applicant will incur a cost for the coverage.

(B) The applicant is otherwise ineligible for QMB-BAS.

(C) The applicant does not have a service liability in excess of the Part A premium.

(d) The Department may not refer a case for medical support enforcement when the referral is based solely on health care services provided through an Indian Health Program to a child who is eligible for health care services from the Indian Health Service.

(2) Each individual must make a good faith effort to obtain available coverage under Tri-Care.

(3) To be eligible for the OSIPM and QMB-BAS programs, once informed of the requirement, an individual who is able to must apply for, accept, and maintain cost-effective, employer-sponsored health insurance (see OAR 461-155-0360). In the OSIPM and QMB-BAS programs, the individual is not required to incur a cost for the health insurance.

(4) An individual who fails to meet an applicable requirement in sections (1), (2), or (3) of this rule is ineligible.

(5) In the case of an individual failing to meet the requirements of section (1) of this rule, the Department applies the penalty after providing the client with notice and opportunity to show the provisions of OAR 461-120-0350 apply.

(6) The penalty provided by this rule ends when the individual meets the requirements of this rule.

(7) The penalty does not apply to individuals who are not legally able to assign rights on behalf of themselves.

Stat. Auth.: ORS 411.060, 411.070, 412.024, 412.049, 414.042

Stats. Implemented: ORS 411.060, 411.070, 412.001, 412.024, 412.049, 414.025, 414.042

Hist.: AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 30-1996, f. & cert. ef. 9-23-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 25-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 12-27-16; SSP 31-2016, f. & cert. ef. 9-1-16; SSP 44-2016, f. 12-7-16, cert. ef. 1-1-17; SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-120-0350

Clients Excused from Good Cause from Compliance with Requirements to Pursue Child Support, Health Care Coverage, and Medical Support

(1) In all programs except the OSIPM and QMB programs, a client is excused from the requirements of OAR 461-120-0340(1) and 461-120-0345(1)(a) if:

(a) The client's compliance would result in emotional or physical harm to the dependent child (see OAR 461-001-0000) or to the caretaker relative (see OAR 461-001-0000). The statement of the caretaker relative alone is prima facie evidence that harm would result;

(b) The child was conceived as a result of incest or rape and efforts to obtain support would be detrimental to the dependent child. The statement

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of the caretaker relative alone is prima facie evidence on the issues of conception and detrimental effect to the dependent child;

(c) Legal proceedings are pending for adoption of the needy child; or

(d) The parent is being helped by a public or licensed private social agency to resolve the issue of whether to release the child for adoption.

(2) In the OSIPM and QMB programs, an individual is excused from the requirements of OAR 461-120-0315 and 461-120-0345 if any of the following subsections are applicable:

(a) The individual's compliance would result in emotional or physical harm to the individual, the spouse, or any child on whose behalf cooperation is required. The statement of the individual or spouse serves as prima facie evidence that harm would result.

(b) The child was conceived as a result of incest or rape and efforts to cooperate would be detrimental to the child, the individual, or the spouse. The statement of the individual serves as prima facie evidence on the issues of conception and the detrimental effects on the child, individual, or spouse.

(c) Legal proceedings are pending for adoption of the child.

(d) The parent is being helped by a public or licensed private social agency to resolve the issue of whether to release the child for adoption.

(e) The individual is pregnant.

(3) In the REFM program, a pregnant client is excused from the requirements of OAR 461-120-0345.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.006, 412.014, 412.049, 412.124, 414.231

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.006, 412.014, 412.049, 412.124, 414.231

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 9-2012, f. 3-29-12, cert. ef. 4-1-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 25-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 12-27-16; SSP 31-2016, f. & cert. ef. 9-1-16; SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-135-0832

Estate Administration; Definitions

Effective July 18, 1995, for purposes of these rules (OAR 461-135-0832 to 461-135-0847) and ORS 93.268, 410.075, 411.620, 411.630, 411.694, 411.708, 411.795, 416.310, 416.340, and 416.350 the terms listed below have the meanings ascribed to them herein; provided, however, as used in these rules, any term has the same meaning as when used in a comparable context in the laws of the United States in effect on June 1, 1996, relating to the recovery of medical assistance paid by a state pursuant to 42 USC 1396 et. seq. relating to Grants to States for Medical Assistance Programs, unless a different meaning is clearly required or the term is specifically defined herein. The Department applies the definitions and procedures set forth in these rules to recoveries and claims made pursuant to ORS 411.708, 411.795, 416.310, 416.340, and 416.350.

(1) "Assets" means all income and resources of an individual, including any income or resources that an individual is entitled to at the time of death, including any income or resources to which the individual is entitled, but does not receive, because of action: by the individual; the individual's spouse (see OAR 461-001-0000); by a person, including a court or administrative body with legal authority to act in place of or on behalf of the individual; or by any person, including any court or administrative body, acting at the direction or upon the request of the individual.

(2) "Assign" means a person who acquires an interest in real or personal property or an asset pursuant to a written or oral assignment of such real or personal property or asset from a person with the legal right to assign it.

(3) "Assistance" means general assistance and public assistance as defined in ORS 411.010 and medical assistance as defined in ORS 414.025.

(4) "Bona fide purchaser for value" means any person who provides consideration, including money or property, to a seller or transferor of real property or personal property equal to the fair market value of the real or personal property sold or transferred.

(5) "Child under age 21" means the deceased recipient's natural or adopted son or daughter who is under 21 years of age throughout the time the Department seeks to enforce its claim.

(6) "Child with a disability" means the deceased recipient's natural or adopted son or daughter of any age, who meets SSI disability criteria throughout the time the Department seeks to enforce its claim, and who presents evidence to the Department substantiating the disability within two years after the Department initially asserts its claim.

(7) "Child with a visual impairment" means the deceased recipient's natural or adopted son or daughter, of any age, who, within two years after

the Department initially asserts its claim, substantiates blindness throughout the time the Department seeks to enforce its claim by presenting evidence of:

(a) Vision of 20/200 or less in the better eye with a corrective lens;

(b) A limitation in vision field to an angle of 20 degrees or less; or

(c) Meeting any other SSI criteria for blindness.

(8) "Consideration furnished test" means the method by which the ownership of real or personal property is traced to its economic origin. The fractional share of the property considered owned by a co-owner shall be that fractional share to have originally belonged to or to be attributable to the monetary consideration furnished by the co-owner. The fractional share is based on the proportion the original ownership share or monetary consideration bore to the acquisition cost and, if applicable, capital additions for the property. The fractional share is not based on the dollar amount of contribution compared to the current market value of the property. For example, if one co-owner contributed \$2,500 and the other \$7,500 to the purchase price of a \$10,000 property in 1960; in 1995, the property is appraised at \$50,000. The co-owner who contributed \$2,500 is considered to own 25% of the property in 1995.

(9) "Convincing evidence" includes, but is not limited to:

(a) Recorded documents of title.

(b) Unrecorded documents of title executed contemporaneously with the transaction or transfer at issue.

(c) Tax statements or returns.

(d) Records of banking, financial or other similar institutions.

(e) Written receipts, bills of sale or other writings or documents executed contemporaneously with the transaction or transfer at issue.

(f) Such other reliable, probative evidence, including oral, of a similar nature and authenticity that accurately reflects the true facts of the transaction or transfer at issue.

(10) "Date of request" means the date an individual or someone authorized on behalf of the individual contacts the Department or uses another appropriate method to request benefits (see OAR 461-115-0150). The request may be oral or in writing. It starts the application process.

(11) "Department" means the Department of Human Services, the Oregon Health Authority, or both.

(12) "Domestic partner" means an individual joined in a domestic partnership as defined in ORS 106.310.

(13) "Estate" means with respect to the collection of payments made for medical assistance provided on or after July 18, 1995 all real property, personal property, or other assets, wherever located, in which a recipient had any legal title or ownership or beneficial interest at the time of death, including real property, personal property, or other assets conveyed by the recipient to, subsequently acquired by, or traceable to, a person, including the recipient's spouse and any successor-in-interest to the recipient's spouse, through:

(a) Tenancy by the entirety;

(b) Joint tenancy;

(c) Tenancy in common;

(d) Not as tenants in common, but with the right of survivorship;

(e) Life estate;

(f) Transfer on death deed;

(g) Living trust;

(h) Annuity purchased on or after April 1, 2001; or

(i) Other similar arrangement.

(14) "General Assistance" means "general assistance" as defined in ORS 411.010.

(15) "Heir" means any individual, including the surviving spouse, who is entitled under intestate succession to the real property, personal property, and assets of a decedent who died wholly or partially intestate.

(16) "Interest" means any form of legal, beneficial, equitable or ownership interest.

(17) "Interspousal transfer" means any transfer, or chain of transfers, that effectively transfers title or control of an asset, or an interest in an asset, from one spouse to another, including: direct transfers between spouses, transfers from one or both spouses to a trust, and transfers from one trust to another trust.

(18) "Intestate" means one who dies without leaving a valid will, or the circumstance of dying without leaving a valid will, effectively disposing of all of a decedent's estate.

(19) "Intestate succession" means succession to real property, personal property or assets of a decedent who dies intestate or partially intestate.

(20) "Joint tenancy" means ownership of property held under circumstances that entitle one or more owners to the whole of the property on

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the death of the other owner(s), including, but not limited to, joint tenants with right of survivorship and tenants by the entirety.

(21) "Legal title" means legal ownership by a person.

(22) "Life estate" means an interest in real or personal property that terminates upon the death of a measuring life.

(23) "Living trust" means a revocable or irrevocable inter vivos trust funded with assets to which the recipient is legally entitled.

(24) "Medical Assistance" (MA) is defined in ORS 414.025 and incorporated by this reference.

(25) "Medical institution" means a facility that provides care and services equivalent to those received in a nursing facility. "Medical institution" does not apply to home and community-based care (see OAR 461-001-0030), in-home services, adult foster home (AFH) care, residential care facility (RCF) services, or assisted living facility (ALF) care.

(26) "Medicare cost sharing" means medical assistance funds used to pay Medicare premiums, coinsurance, copayments and deductibles.

(27) "Ownership documents" mean any applicable documents, certificates or written evidence of title or ownership such as, but not limited to, recorded deeds, stock certificates, certificates of title, bills of sale, or other similar documents evidencing ownership or legal title held by a person.

(28) "Permanently institutionalized" means an individual, regardless of age, who, at the time of his or her death, had resided in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, for 180 days or more.

(29) "Person" means any individual, corporation, association, firm, partnership, trust, estate or other form of entity.

(30) "Personal property" means all tangible and intangible personal property wherever located, including, but not limited to, chattels and movables, boats, vehicles, furniture, personal effects, livestock, tools, farming implements, cash, currency, negotiable papers, securities, contracts, and contract rights.

(31) "Probate estate" means all real property, personal property, or other assets included in a decedent's estate as it is defined by applicable state probate law.

(32) "Real property" means all land wherever situated, including improvements and fixtures thereon, and every estate, interest, and right, whether legal or equitable, therein including, but not limited to, fee simple, terms for years, life estates, leasehold interests, condominiums or time share properties. "Real property" includes property conveyed by the individual to, subsequently acquired by, or traceable to, a person, including the individual's surviving spouse and any successor-in-interest to the individual's surviving spouse, if the "real property" may be included in the individual's, or the individual's surviving spouse's, estate, as defined in this rule.

(33) "Recipient of property" means:

(a) Any survivor, heir, assign, devisee under a will, beneficiary of a trust, transferee or other person to whom real property, personal property or other assets pass upon the death of the decedent either by law, intestate succession, contract, will, trust instrument or otherwise; and

(b) Any subsequent transferee of such real property, personal property, or asset, or proceeds from the sale thereof, through any form of conveyance, that is not a bona fide purchaser for value.

(34) "Survivor" means any person who, as a co-tenant, is automatically entitled to an expanded share of real or personal property upon the death of a fellow co-tenant.

(35) "Survivorship" means an interest in real or personal property that expires upon the death of an individual whereby the interest of the individual's co-owners automatically expands to the same extent without necessity for any act of transfer or distribution.

(36) "Tenancy in common" means ownership of real or personal property by an individual together with one or more other persons which ownership interest shall not pass by survivorship upon the death of the individual.

(37) "Time of death" means the instant of death, the time and date of which shall be established in the place of the decedent's residence; in no case shall time of death be construed to mean a time after which an interest in real or personal property or other assets may:

(a) Pass by survivorship or other operation of law due to the death of the decedent; or

(b) Terminate by reason of the decedent's death.

(38) "Transfer on death deed" has the meaning set out in ORS 93.949.

(39) "Value" means the fair market value. Fair market value is the price at which real or personal property would change hands between a willing buyer and a willing seller. In the event the real or personal property was not reported to the Department by the deceased Medicaid recipient,

the "value" would be established based on its fair market value at the time of discovery.

Stat. Auth.: ORS 410.075, 411.060, 411.070, 413.042, 416.340, 416.350, 2013 OL 14 Sec. 10
Stats. Implemented: ORS 93.969, 410.070, 410.075, 411.010, 411.060, 411.708, 411.795,
416.310, 416.340, 416.350, 2013 OL 14 Sec. 10

Hist.: AFS 29-1996, f. & cert. ef. 8-28-96; AFS 30-2000, f. & cert. ef. 12-1-00; AFS 6-2001,
f. 3-30-01, cert. ef. 4-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-
1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 33-2003, f.
12-31-03, cert. ef. 1-4-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 6-2006, f. 3-31-06,
cert. ef. 4-1-06; SSP 16-2008, f. 7-1-08, cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef.
1-1-09; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 17-
2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 26-2013, f. & cert. ef. 10-1-13; SSP 37-
2013, f. 12-31-13, cert. ef. 1-1-14; SSP 15-2014, f. & cert. ef. 7-1-14; SSP 2-2017(Temp), f.
& cert. ef. 2-13-17 thru 8-11-17; SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-135-0835

Limits on Estate Claims

(1) The Estate Administration Unit is designated and authorized to administer the estate recovery program for the Oregon Health Authority and the Department of Human Services, and to present and file claims for payment. The Manager and Assistant Manager of the Estate Administration Unit, Estate Administrators, Assistant Estate Administrators, and Accounts Receivable Specialist are authorized to present, file, and resolve claims for the Estate Administration Unit. The Manager or Assistant Manager may designate other individuals to present, file, or resolve claims. This rule sets out some of these claims.

(2) For the OSIP program (see OAR 461-101-0010):

(a) The amount of any payments or benefits, including an overpayment (see OAR 461-195-0501), are a claim against the probate estate (see OAR 461-135-0832) of any deceased recipient.

(b) The claim for correctly paid payments or benefits under OSIP are deferred until the death of the spouse (see OAR 461-001-0000) or domestic partner (see OAR 461-135-0832), if any, of the deceased recipient.

(c) If the deceased recipient has no probate estate, the enforcement of the claim has been deferred, or there are insufficient resources in the probate estate to pay the claim in full, the probate estate of the spouse or domestic partner of the deceased recipient, if any, is charged for any payments or benefits paid under OSIP to the deceased recipient, the spouse, or domestic partner.

(d) The claim for correctly paid payments or benefits under OSIP may not be enforced if the deceased recipient is survived by a child under age 21 (see OAR 461-135-0832), a child with a disability (see OAR 461-135-0832), or a child with a visual impairment (see OAR 461-135-0832); and the child survives to the closing of the probate estate.

(e) Transfers of real or personal property without adequate consideration, by recipients of payments or benefits under OSIP, are voidable and may be set aside under ORS 411.620.

(f) Except when there is a surviving spouse or domestic partner, or a surviving child under age 21, a child with a disability, or a child with a visual impairment, the amount of any payments or benefits provided is a claim against the estate (see OAR 461-135-0832) in any conservatorship proceedings and may be paid pursuant to ORS 125.495.

(3) For General Assistance (see OAR 461-135-0832):

(a) The amounts of any payments or benefits, including overpayments, are a claim against the probate estate of any deceased recipient. The amount includes the state's monthly contribution, paid prior to January 1, 2014, to the federal government for the recipient's Medicare Part D prescription drug coverage. Effective July 1, 2016, any correctly paid benefits under Oregon Laws 2016, chapter 93, section 1 are excluded, except than an overpayment of benefits under Oregon Laws 2016, chapter 93, section 1 is included in a claim against the probate estate.

(b) The claim for correctly paid payments or benefits under the General Assistance program is deferred until the death of the spouse or domestic partner, if any, of the deceased recipient.

(c) If the deceased recipient has no probate estate, the enforcement of the claim has been deferred, or there are insufficient resources in the probate estate to pay the claim in full, then the probate estate of the spouse or domestic partner of the deceased recipient, if any, is charged for any payments or benefits to the deceased recipient, the spouse, or domestic partner.

(d) The claim for correctly paid payments or benefits under the General Assistance program may not be enforced if the deceased recipient is survived by a child under age 21, a child with a disability, or a child with a visual impairment; and the child survives to the closing of the probate estate.

(e) Except when there is a surviving spouse or domestic partner, or a surviving child under age 21, a child with a disability, or child with a visual impairment, the amount of any assistance paid is a claim against the

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estate in any conservatorship proceedings and may be paid pursuant to ORS 125.495.

(4) For Medical Assistance (MA, as defined in OAR 461-135-0832):

(a) In determining the extent of the estate resources subject to the claim of the Department for correctly paid benefits, except as provided in subsection (b) of this section, the Department must disregard resources in an amount equal to the value (see OAR 461-135-0832) of resources excluded in the most recent eligibility determination under OAR 461-160-0855, based on payments received under a qualified partnership policy (see OAR 461-001-0000). The disregard of resources specific to the estate recovery claim applies to MA benefits received after the effective date of the MA eligibility determination in which a qualified partnership policy was considered and approved. The amount of any MA incurred in a prior MA eligibility period where qualified partnership policy benefits were not considered is not subject to the estate resource disregard.

(b) There is no disregard of resources under subsection (a) of this section if the recipient, or the spouse of the recipient, at any time transferred the value of the qualified partnership policy excluded resource amount to another individual for less than fair market value prior to the death of the recipient or the recipient's spouse, or exhausted the disregarded resource amount by purchasing things of value to the recipient or the recipient's spouse while either was living.

(c) The amount of any incorrectly paid payments or benefits, excluding an administrative error overpayment, are a claim, against the probate estate of any deceased recipient.

(d) The claim for correctly paid payments or benefits under MA is deferred until the death of the surviving spouse, if any, of the deceased recipient. After the death of a surviving spouse, the deferred claim of the deceased recipient is a claim against the following assets (see OAR 461-135-0832) or their proceeds in the estate of the spouse. The Department has a claim against the estate of the spouse for medical assistance (see OAR 461-135-0832) paid to the recipient, but only to the extent that the spouse received property or other assets from the recipient through any of the following:

(A) Probate.

(B) Operation of law.

(e) The claim for correctly paid payments or benefits under MA may not be enforced if the deceased recipient is survived by a child under age 21, a child with a disability, or a child with a visual impairment.

(f) For recipients who are not permanently institutionalized (see OAR 461-135-0832):

(A) The amount of any payments or benefits paid prior to October 1, 1993 to or on behalf of a recipient 65 years of age or older are a claim against the probate estate of any deceased recipient.

(B) The amount of any payments or benefits, paid on or after October 1, 1993 and prior to July 18, 1995, to or on behalf of a recipient 55 years of age or older are a claim against the probate estate of any deceased recipient.

(C) The amount of any payments or benefits, paid on or after July 18, 1995 and prior to October 1, 2013, to or on behalf of a recipient 55 years of age or older are a claim against the estate of any deceased recipient. All correctly made payments on or after January 1, 2010 for Medicare cost sharing (see OAR 461-135-0832) are excluded from a claim.

(D) The amount of any payments or benefits, paid October 1, 2013 or later, to or on behalf of a recipient 55 years of age or older, during the time the Department was paying any of the cost of care of the individual in a nursing facility, home and community based care (see OAR 461-001-0030), or in home services through the State Plan Personal Care Services (see OAR 411-034-0010), are a claim against the estate of any deceased recipient. All correctly made payments on or after January 1, 2010 for Medicare cost sharing are excluded from a claim.

(g) For permanently institutionalized individuals, a claim includes amounts calculated according to subsection (f) of this section and the following:

(A) The amount of any payments or benefits before July 18, 1995 to or on behalf of a recipient who was permanently institutionalized is a claim against the probate estate of the deceased recipient.

(B) The amount of any payments or benefits paid between July 19, 1995 through September 30, 2013 to or on behalf of a recipient who was permanently institutionalized is a claim against the estate of the deceased recipient.

(C) The amount of any payment for services provided in a nursing facility, an intermediate care facility for an individual with intellectual or developmental disabilities, a psychiatric institution, or other medical institution (see OAR 461-135-0832) paid after September 30, 2013 to or on

behalf of a recipient who was permanently institutionalized is a claim against the estate of the deceased recipient.

(5) The amount paid, for a recipient age 55 or older, after December 31, 2013, to the federal government for the recipient's Medicare Part D prescription drug coverage is a claim against the estate of the deceased recipient.

(6) For trusts that comply with OAR 461-145-0540(10) and (11), the maximum distribution to the Department is the total of all MA payments or benefits paid to or on behalf of the deceased recipient. Subsections (4)(d) and (4)(e) of this rule do not apply to this section.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 413.042, 413.085, 416.340, 416.350, 413.085, 416.310, 416.350, OL 2016, ch 93

Hist.: AFS 13-1991, f. & cert. ef. 7-1-91; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 16-2008, f. 7-1-08, cert. ef. 10-1-08; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 16-2010(Temp), f. & cert. ef. 5-27-10 thru 11-23-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 17-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 26-2013, f. & cert. ef. 10-1-13; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 15-2014, f. & cert. ef. 7-1-14; SSP 24-2016, f. 6-29-16, cert. ef. 7-1-16; SSP 34-2016, f. 9-30-16, cert. ef. 10-1-16; SSP 2-2017(Temp), f. & cert. ef. 2-13-17 thru 8-11-17; SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-145-0040

Burial Arrangements and Burial Fund

(1) The following definitions apply to this rule:

(a) "Burial arrangement" means an agreement with an entity — such as a funeral agreement (which means an arrangement made with a licensed funeral provider), burial insurance, or a burial trust designating a funeral director as the beneficiary that establishes provisions for payment of an individual's burial costs. A "burial arrangement" does not include a burial space, which is covered in OAR 461-145-0050, or a burial fund (see subsection (b) of this section).

(b) "Burial fund" means an identifiable fund set aside for a client's burial costs. A "burial fund" does not include a burial space, which is covered in OAR 461-145-0050, or a burial arrangement (see subsection (a) of this section).

(2) Except as provided in subsection (e) of this section, a burial arrangement is treated as follows:

(a) In the ERDC, REF, REFM, SNAP, and TANF programs, the equity value (see OAR 461-001-0000) of one prepaid burial arrangement for each member of the filing group (see OAR 461-110-0310) is excluded.

(b) For grandfathered OSIP and OSIPM clients (see OAR 461-125-0330(2), 461-125-0370(1)(b), and 461-135-0771), up to \$1,000 in combined equity value of each burial arrangement with a licensed funeral director (plus accrued interest) and life insurance policies are excluded. The amount of combined cash and equity value of all life insurance and burial arrangements that exceeds \$1,000 is counted as a resource.

(c) In the OSIP, OSIPM, and QMB-DW programs, the amount in an irrevocable burial trust or any other irrevocable arrangement to cover burial costs is excluded.

(d) In all programs not listed in subsection (a) of this section and for OSIP and OSIPM clients not covered by subsection (b) of this section, a burial arrangement is treated in the manner as the program treats a burial fund under section (3) of this rule.

(e) Burial insurance that generates a cash surrender value to which the owner has access is considered life insurance and is treated in accordance with OAR 461-145-0320 and, as applicable, subsection (b) of this section.

(f) Burial insurance that does not generate a cash surrender value, or generates cash surrender value to which the owner does not have access, is considered an irrevocable arrangement and treated in accordance with subsection (c) of this section.

(3) A burial fund is treated as follows:

(a) In the OSIP, OSIPM, and QMB-DW programs:

(A) A burial fund may be established only from financial means such as cash, burial contracts, bank accounts, stocks, bonds, or life insurance policies.

(B) A burial fund is counted as a resource if it is commingled with assets unrelated to a burial. The amount set aside for burial must be in a separate account to be excluded from resource consideration.

(C) A burial fund may be established if the countable (see OAR 461-001-0000) resources of a client exceed allowable limits. A burial fund is excluded from the resource calculation to the extent allowed in paragraph (D) of this subsection.

(D) The following calculation determines the exclusion for a burial fund:

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(i) Up to \$1,500 of a burial fund may be excluded from resources for each of the following:

- (I) The client.
- (II) The client's spouse.

(ii) The amount in subparagraph (i) of this paragraph is reduced by the total of the following amounts:

(I) The face value of life insurance policies owned by the client that have already been excluded from resources. This does not include term life insurance policies that do not generate a cash surrender value.

(II) The amount in an irrevocable burial trust or any other irrevocable arrangement designated to cover burial costs, including the face value of burial insurance considered an irrevocable arrangement (see subsection (2)(f) of this rule). Burial costs do not include burial spaces or merchandise (see OAR 461-145-0050).

(E) All interest earned on an excluded burial fund or increases in the value of an excluded burial arrangement if left in the fund is excluded from income.

(b) In the QMB-BAS, QMB-SMB, and QMB-SMF programs, a burial fund is excluded as a resource.

(c) In all programs not listed in subsections (a) or (b) of this section, a burial fund is counted as a resource.

(4) There is no overpayment for the time period during which the burial arrangement or burial fund existed if a client ---

- (a) Cancels an excluded burial arrangement; or
- (b) Uses an excluded burial fund for any purpose other than burial costs.

(5) If an asset originally used as a burial arrangement or burial fund is converted to other uses, the asset is treated under the other applicable rules.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.049, 413.085, 414.685
Stats. Implemented: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.049, 413.085, 414.685, 414.839
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16; SSP 25-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 12-27-16; SSP 31-2016, f. & cert. ef. 9-1-16; SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-145-0050

Burial Space and Merchandise

(1) For the purpose of this rule, burial spaces include conventional gravesites, crypts, mausoleums, urns, niches, burial vaults, and other repositories that are traditionally used for the remains of deceased individuals. Burial spaces also include headstones and the opening and closing of the gravesite, and the reasonable and necessary improvements or additions to such spaces. Burial merchandise includes, but is not limited to, urns, caskets, liners, headstones, markers, plaques and foundations.

(2) In the ERDC, REF, REFM, SNAP, and TANF programs, the Department excludes as a resource the equity value (see OAR 461-001-0000) of all burial space or merchandise for each member of the financial group (see OAR 461-110-0530), except that for burial space and merchandise that serves the same purpose, only one item per individual is excluded.

(3) In the OSIP, OSIPM, and QMB-DW programs, the Department excludes as a resource the equity value (see OAR 461-001-0000) of a burial space and merchandise if owned by the client and designated for the client, the spouse (see OAR 461-001-0000) of the client, minor and adult children, siblings, parents, and the spouse of any of these individuals – except that for burial space and merchandise that serves the same purpose, only one item per individual is excluded.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685
Stats. Implemented: ORS 409.010, 409.050, 410.020, 410.070, 410.080, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685, 414.839
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 11-2015, f. 3-13-15, cert. ef. 4-1-15; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16; SSP 25-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 12-27-16; SSP 31-2016, f. & cert. ef. 9-1-16; SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-145-0108

Dividends, Interest and Royalties

(1) In the OSIP, OSIPM, and QMB programs:

(a) Unless otherwise stated in chapter 461 of the Oregon Administrative Rules, dividends and interest earned on mutual funds and securities, including stocks, bonds, educational savings bonds, and certificates of deposit (CDs), are excluded as income. Interest earned on other assets is treated according to the rule for that asset.

(b) Royalties include compensation paid to the owner for the use of property, usually copyrighted material or natural resources, such as coal, oil, or natural gas, which normally are extracted from the ground. Except as provided in paragraphs (A) and (B) of this subsection, royalties are treated as unearned income.

(A) Royalties received as part of a business or trade are treated in accordance with OAR 461-145-0915;

(B) Royalties received by an individual in connection with any publication of the individual's work are treated as earned income (see OAR 461-145-0130).

(2) In all programs except the OSIP, OSIPM, and QMB programs:

- (a) Dividends are counted as unearned income.
- (b) Interest income is counted as unearned income.

(c) Royalties are counted as unearned income, except that royalties are counted as earned income if the client is actively engaged in the activity from which the royalties are accrued.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 414.042, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.816, 414.042, 412.049

Hist.: SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-145-0110

Domestic Volunteer Services Act (VISTA, RSVP, SCORE, ACE)

In all Department programs covered by Chapter 461 of the Oregon Administrative Rules, with respect to federal programs under the Domestic Volunteers Service Act of 1973 (Pub. L. No. 93 113):

(1) Payments under Title I --- VISTA, University Year of Action, and Urban Crime Prevention --- are treated as follows:

(a) In the ERDC, OSIP, OSIPM, QMB, REF, REFM, and TANF programs, these payments are excluded, except that in the ERDC, REF, REFM, and TANF programs, these payments are counted as earned income if the total value of all compensation is equal to or greater than compensation at the state minimum wage.

(b) In all programs except the ERDC, OSIP, OSIPM, QMB, REF, REFM, and TANF programs:

(A) The payments are excluded if the client is receiving Department program benefits when they join the Title I program. The exclusion of payments continues until the client has a break in receiving Department benefits of more than one month.

(B) The payments are counted as earned income for clients who joined the Title I program before applying for Department program benefits.

(2) Payments are excluded for programs under Title II (National Older Americans Volunteer Programs), which include:

- (a) Retired Senior Volunteer Program (RSVP) Title II, Section 201.
- (b) Foster Grandparent Program Title II, Section 211.
- (c) Older American Community programs.
- (d) Senior Companion Program.

(3) Payments are excluded for programs under Title III (National Volunteer Programs to Assist Small Businesses and Promote Volunteer Service by Persons with Business Experience), which include:

(a) Service Corps of Retired Executives (SCORE) Title III, Section 302.

(b) Active Corps of Executives (ACE) Title III, Section 302.

Stat. Auth.: ORS 411.060, 411.070, 411.700, 411.816, 414.042, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.700, 411.816, 414.042, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 25-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 12-27-16; SSP 31-2016, f. & cert. ef. 9-1-16; SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-145-0145

Educational Account

(1) The Individual Education Account (IEA) is an asset accrued by JOBS Plus participants. The IEA is excluded while it accumulates, while it is saved, and when it is withdrawn for educational purposes.

(2) In the OSIP and OSIPM programs:

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(a) Funds in a Qualified Tuition Programs under Section 529 of the Internal Revenue Code are treated as follows:

(A) They are a countable (see OAR 461-001-0000) resource to the individual who owns the account.

(B) They are excluded as a resource for the beneficiary, unless the beneficiary is also the owner.

(b) Funds in a Coverdell Education Savings Accounts are treated as follows:

(A) They are excluded as a resource to the designated beneficiary.

(B) If the contributor is not a designated beneficiary, funds deposited into the account are no longer the resource of the contributor beginning with the month after the month the cash is transferred. The transfer may be considered a disqualifying transfer of resources by the contributor under OAR 461-140-0210 and 461-140-0220.

(c) Distributions from a Coverdell Education Savings Account to a designated beneficiary are treated as follows:

(A) They are excluded as income in the month of receipt.

(B) If the excluded distribution is retained into the month following the month of receipt, it is excluded as a resource for nine months beginning with the month after the month of receipt.

(C) If the beneficiary spends any portion of a distribution for a purpose other than the educational expenses of the beneficiary, or no longer intends to use the funds for the educational expenses of the beneficiary, the non-education portion of the funds is countable as unearned income at the earlier of the following:

(i) The month the funds are spent.

(ii) The month the beneficiary no longer intends to use the funds for educational expenses.

(D) If a countable distribution is retained into the month following the month of receipt, it is a countable resource of the designated beneficiary.

(d) Other funds or gifts set aside to pay educational expenses are treated in accordance with subsection (c) of this section, except that the exclusion does not apply to any portion set aside or actually used for food or shelter. See OAR 461-145-0150 for information on other types of educational income.

(3) In the SNAP program, the value of funds in a qualified tuition program under section 529 of the Internal Revenue Code or in a Coverdell education savings account is excluded.

Stat. Auth.: ORS 409.050, 411.060, 411.404, 411.706, 411.816, 413.085, 414.025, 414.685

Stats. Implemented: ORS 411.060, 411.816, 413.085, 414.025, 414.685

Hist.: AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; Renumbered from 461-145-0265, SSP 23-2008, f. & cert. ef. 10-1-08; SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-145-0150

Educational Income

(1) Educational income is income designated specifically for educational expenses. To be considered educational income, the income must be received by one of the following:

(a) A student at a recognized institution of post-secondary education. Post-secondary education is education offered primarily to individuals 18 years of age or older. Admission may — but does not necessarily — require a high school diploma or equivalent.

(b) A student at a school for individuals with disabilities.

(c) A student in a vocational education program.

(d) A student in a program that provides for completion of requirements for a secondary school diploma or the equivalent.

(2) To determine the amount of educational income to exclude, education expenses listed in the financial aid award letter are used unless one of the following is true:

(a) The student provides verification of amounts different from those listed in the award letter, in which case the verified amounts from the student are used.

(b) The student receives child care benefits — ERDC or other child care subsidies. The amount the student actually pays for child care (including the ERDC copay) is excluded as educational income instead of the amount shown in the award letter.

(c) The student states that actual transportation costs exceed the amount allowed for the expense in the award letter. In that situation, the number of miles to and from school is multiplied by \$0.20. The product or the amount from the award letter, whichever is greater, is excluded.

(3) The following items are excluded:

(a) Educational income authorized by the Carl D. Perkins Vocational and Applied Technology Education Act or Title IV of the Higher Education Act or made available by the Bureau of Indian Affairs (BIA).

(b) All income from educational loans.

(c) In the OSIP, OSIPM, and QMB programs, the augmented portion of a shelter stipend from the Department of Veterans Affairs designated for the individual's dependent.

(4) Except as provided in section (5) of this rule, the cost of the following items from remaining educational funds (including non Title IV work study, externship (see OAR 461-001-0015), graduate assistantship (see OAR 461-001-0015), graduate fellowship (see OAR 461-001-0015) wages, and internship (see OAR 461-001-0015)) is excluded:

(a) Tuition, mandatory fees, books and supplies, transportation, required rental or purchase of equipment or materials charged to students enrolled in a specific curriculum, other miscellaneous personal expenses (except room and board), and loan originator fees and insurance premiums required to obtain an educational loan.

(b) In all programs except ERDC --- dependent care.

(5) For a participant in the Parents as Scholars (PAS) component of the JOBS program who has been approved for PAS pursuant to OAR 461-190-0199, all remaining educational funds, including those funds intended for room and board, are excluded.

(6) In all programs covered by chapter 461 of the Oregon Administrative Rules, after allowing exclusions, the remaining income is treated as follows:

(a) Income received through work study (including work study provided through a VA program or other educational program), fellowships and teaching-assistant positions not excluded by section (3) or (4) of this rule is earned income.

(b) Educational income not covered by subsection (a) of this section is prorated over the period it is intended to cover. If the client has already received the income, the prorated amount is counted monthly beginning with the first month of the period. If the client has not received the income at the time the determination is made, the prorated income is counted starting in the month the client expects to receive it.

(7) Educational awards paid under the National and Community Service Trust Act of 1993 (including AmeriCorps) are treated in accordance with OAR 461-145-0365.

(8) In the OSIP, OSIPM, and QMB programs, distributions from a Coverdell Education Savings account are treated in accordance with OAR 461-145-0145.

Stat. Auth.: ORS 329A.500, 409.050, 411.060, 411.083, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685

Stats. Implemented: ORS 329A.500, 409.050, 411.083, 411.404, 411.620, 411.630, 411.635, 411.640, 411.660, 411.690, 411.706, 411.816, 411.825, 412.014, 412.049, 413.085, 414.685

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 16-1993, f. & cert. ef. 9-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-145-0210

Gifts and Winnings

(1) For the purposes of this rule:

(a) Gifts are items given to or received by an individual on or for a special occasion, such as a holiday, birthday, graduation, or wedding. Gifts are not given or received on a regular basis.

(b) Winnings are prizes given to an individual in a contest, game of chance, or similar event. Winnings in the form of money may be distributed periodically (e.g., monthly) or in a lump-sum.

(2) In the ERDC program, gifts and winnings are excluded.

(3) In all programs except the ERDC program:

(a) In-kind gifts and winnings are treated according to the rule applicable to the specific type of asset. In the OSIP, OSIPM, and QMB programs, if an individual is offered a choice between an in-kind item and cash, the cash amount is considered unearned income, even if the individual chooses the in-kind item and regardless of the value, if any, of the in-kind item.

(b) Gifts and winnings in the form of money are treated as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120). In the OSIP, OSIPM, and QMB programs, gambling losses are not subtracted from gambling winnings in determining the individual's countable (see OAR 461-001-0000) income.

(c) The value of a gift card or certificate is considered income in the month it is received if the gift card or certificate can be used to purchase

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food or shelter or can be resold. There is a rebuttable presumption that the gift card or certificate can be resold.

(4) For employment-related items, see OAR 461-145-0130.
Stat. Auth.: ORS 329A.500, 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685
Stats. Implemented: ORS 329A.500, 409.010, 411.060, 411.070, 411.404, 411.700, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 9-1997, f. & cert. ef. 7-1-97; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-145-0240

Income-Producing Sales Contract

(1) The equity value (see OAR 461-001-0000) of an income-producing sales contract is treated as follows:

(a) In the OSIPM and QMB-DW programs:

(A) Except for a contract resulting from the sale of a home, that is treated in accordance with paragraph (B) of this subsection, it is a countable (see OAR 461-001-0000) resource valued at the outstanding principal balance of the contract unless the individual provides convincing evidence of a lower cash value or there is a legal bar to the sale of the contract. If there is a legal bar to the sale of the contract, the equity value of the contract is a transfer of assets (OAR 461-140-0210 to 461-140-0300 regulate the effect of a transfer of assets on a client) for less than fair market value (see OAR 461-001-0000).

(B) The equity value of a contract resulting from the sale of a home is excluded if the entire principal portion of the payments received from the contract is used to purchase another home within three calendar months of receipt of the payments. Otherwise the equity value is treated in accordance with paragraph (A) of this subsection.

(b) Except as provided for in subparagraph (a) of this section, it is excluded.

(2) In all programs, income received from a sales contract is treated as provided in OAR 461-145-0460.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685
Stats. Implemented: ORS 409.010, 409.050, 410.070, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685, 414.839
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16; SSP 25-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 12-27-16; SSP 31-2016, f. & cert. ef. 9-1-16; SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-145-0285

Japanese-American Restitution Payments; OSIP, OSIPM, QMB

In the OSIP, OSIPM, and QMB programs:

(1) The following restitution payments are excluded from income and resources:

(a) Restitution payments made by the U.S. Government to individual Japanese-Americans, or the spouse or parent of an individual of Japanese ancestry.

(b) Payments to a survivor of a deceased recipient under subsection (a) of this section.

(c) Restitution payments from the Canadian Government to individual Japanese-Canadians who were interned or relocated during World War II.

(2) Interest earned on payments covered by section (1) of this rule is excluded from income and resources.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.404, 411.706, 413.085, 414.685
Stats. Implemented: ORS 409.010, 409.050, 410.020, 410.070, 410.080, 411.060, 411.070, 411.404, 411.706, 413.085, 414.685, 414.839
Hist.: SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-145-0320

Life Insurance

(1) Benefits paid on a life insurance policy are counted as unearned income in the month received and a resource if retained into the following month.

(a) The Department counts benefits as received when the insured individual dies or when the insured individual is eligible for and receives accelerated payments before death, such as when the insured individual has a terminal illness.

(b) When the payment is a lump sum due to the death of the insured individual a deduction is allowed, not to exceed \$1,500, for the cost of the deceased individual's last illness and burial if these costs were not otherwise insured.

(2) Burial insurance that generates a cash surrender value is treated in the same manner that this rule treats life insurance.

(3) When the ownership or beneficiary of a life insurance policy has been irrevocably assigned and designated for burial, it is treated in accordance with OAR 461-145-0040 and is not counted towards the \$1500 life insurance limit.

(4) The value of a life insurance policy is treated as follows:

(a) All term insurance that has no cash surrender value is excluded.

(b) In all programs except OSIP, OSIPM, and QMB-DW, the cash surrender value of the life insurance policy is excluded.

(c) In the OSIP, OSIPM, and QMB-DW programs:

(A) For the purposes of this subsection, the following definitions apply:

(i) "Cash surrender value" means the equity that the policy acquires over time.

(ii) "Dividend" means a payment of surplus company earnings from the insurer.

(iii) "Dividend accumulation" means a dividend left with the insurer to accumulate interest that may be withdrawn without affecting the policy's face value or cash surrender value.

(iv) "Dividend addition" means the amount of insurance purchased with a dividend that increases the policy's death benefit and cash surrender value.

(v) "Face value" means the amount of the death benefit contracted for at the time the policy was purchased and does not include a dividend addition added after purchase of the policy.

(vi) "Viatical settlement" means an agreement allowing a third party to acquire a life insurance policy from a terminally ill individual at an agreed-upon percentage of the life insurance policy's face value.

(B) The cash surrender value of life insurance policies owned by the financial group (see 461-110-0530) is excluded if the total face value of all policies for the insured individual is less than or equal to \$1,500. If the total face value of all policies for the insured individual is more than \$1,500, the entire cash surrender value are counted as a resource to the owner of the policies. The total face value does not include any dividend addition. A dividend accumulation must count as a resource even if the face value of the policy that generated the dividend accumulation is excluded.

(C) The face value of term life insurance policies excluded under subsection (a) of this section are not counted in determining if the \$1,500.00 life insurance exclusion limit is exceeded.

(D) The cash surrender value of a policy acquired through a viatical settlement is excluded.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.083, 411.404, 411.704, 411.706, 411.816, 412.049, 413.085, 414.685
Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.083, 411.404, 411.704, 411.706, 411.816, 412.049, 413.085, 414.685, 414.839
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16; SSP 25-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 12-27-16; SSP 31-2016, f. & cert. ef. 9-1-16; SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-145-0348

Mineral Rights; OSIP, OSIPM, QMB

In the OSIP, OSIPM, and QMB programs:

(1) Mineral rights represent ownership interest in natural resources such as coal, oil, or natural gas, which normally are extracted from the ground.

(2) Mineral rights are treated as follows:

(a) If the individual owns the property to which the mineral rights pertain, the current market value of the property is assumed to include the value of the mineral rights and is treated in accordance with OAR 461-145-0420.

(b) If the individual does not own the land to which the mineral rights pertain, the current market value of the mineral rights is counted as a resource.

(c) Income received from mineral rights, including compensation paid to the owner for the use or lease of property or natural resources, is considered royalty income and treated in accordance with OAR 461-145-0108.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.404, 411.706, 413.085, 414.685
Stats. Implemented: ORS 409.010, 409.050, 410.020, 410.070, 410.080, 411.060, 411.070, 411.404, 411.706, 413.085, 414.685, 414.839
Hist.: SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-145-0435

Refunds

(1) In the OSIP, OSIPM, and QMB programs:

ADMINISTRATIVE RULES

(a) Rebates, refunds, and other returns of money an individual did not already pay are counted as unearned income in the month received.

(b) Rebates, refunds, and other returns of money an individual already paid are excluded as income.

(c) Rebates that constitute a return on an individual's investment are treated in accordance with OAR 461-145-0108.

(d) Income and property tax refunds are treated in accordance with OAR 461-145-0530.

(2) In all programs except the OSIP, OSIPM, and QMB programs, the Department excludes the following refunds in the month they are received:

- (a) Refunds on merchandise that was purchased or received as a gift.
- (b) Refunds of utility and rental deposits.

(3) In all programs except the QMB program, the Department counts any refund amount remaining after the month of receipt as a resource.

Stat. Auth.: ORS 329A.500, 409.050, 411.060, 411.070, 411.083, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685
Stats. Implemented: ORS 329A.500, 409.010, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685
Hist.: AFS 13-1991, f. & cert. ef. 7-1-91; SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-145-0440

Reimbursement

(1) For the treatment of USDA meal reimbursements, see OAR 461-145-0570.

(2) The reimbursement (see OAR 461-001-0000) of a business expense for an individual who is self-employed is treated as self-employment income (see OAR 461-145-0910, 461-145-0915, and 461-145-0920).

(3) Except as provided in sections (1) and (2) of this rule, a reimbursement is treated as follows:

(a) In the ERDC program, a reimbursement is excluded, except that a reimbursement for child care from a source outside of the Department is counted as unearned income.

(b) In the SNAP program:

(A) A reimbursement in the form of money for a normal household living expense, such as rent or payment on a home loan, personal clothing, or food eaten at home, is unearned income.

(B) Any other reimbursement is treated as follows:

(i) An in-kind reimbursement is excluded.

(ii) A reimbursement in the form of money is excluded if used for the identified expense, unless the expense is covered by program benefits.

(iii) A reimbursement is counted as periodic income (see OAR 461-001-0000 and 461-140-0110) or lump sum income (see OAR 461-001-0000 and 461-140-0120) if not used for the identified expense.

(iv) A reimbursement for an item already covered by the benefits of the benefit group (see OAR 461-110-0750) is counted as periodic income or lump sum income.

(c) In the SNAP program, an expenditure by a business entity that benefits a principal (see OAR 461-145-0088) is counted as earned income (see OAR 461-145-0130).

(d) In all programs except the ERDC and SNAP programs, a reimbursement is treated as follows:

(A) An in-kind reimbursement is excluded.

(B) A reimbursement in the form of money is excluded if used for the identified expense, unless the expense is covered by program benefits.

(C) A reimbursement is counted as periodic income or lump sum income if not used for the identified expense.

(D) A reimbursement for an item already covered by the benefits of the benefit group is counted as unearned income.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.816, 412.049, 413.085, 414.685
Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.816, 412.049, 413.085, 414.685

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 25-2015, f. 9-29-15, cert. ef. 10-1-15; SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-145-0460

Sale of a Resource

(1) In the ERDC program, all proceeds from the sale of a resource are excluded as income and as a resource.

(2) In the QMB-BAS, QMB-SMB, and QMB-SMF programs, for the sale of a resource (including a home):

(a) The interest portion of proceeds is counted as unearned income.

(b) The principal portion of proceeds is excluded as income.

(3) In the OSIPM, and QMB-DW programs:

(a) The principal portion of proceeds from the sale of a resource (other than a home) received on a monthly or other periodic basis is counted as a resource.

(b) The principal portion of proceeds from the sale of a resource (other than a home) received on a lump-sum basis are treated as follows:

(A) If the proceeds are from the sale of an excluded resource, the amount reinvested in another excluded resource is excluded, and the remainder is counted as a resource.

(B) Proceeds from all other sales are counted as a resource.

(c) The interest portion of proceeds from the sale of a resource (other than a home) received on a monthly, other periodic, or lump-sum basis is counted as unearned income.

(d) Proceeds from the sale of a home of the financial group (see OAR 461-110-0530) are treated as follows:

(A) Principal payments, including lump-sum payments, are excluded for three full calendar months from the date of receipt if the financial group intends to use the proceeds to buy another home or for associated costs including:

(i) Down payments.

(ii) Settlement costs.

(iii) Loan processing fees and points.

(iv) Moving expenses.

(v) Necessary repairs to or replacement of the new home's structure or fixtures (including roof, furnace, plumbing, built-in appliances) that are identified and documented prior to occupancy.

(vi) Mortgage payments.

(B) For the purposes of paragraph (A) of this subsection, funds obligated by contract during these three full calendar months are also excluded.

(C) Interest payments are counted as unearned income.

(e) For individuals eligible for OSIPM under OAR 461-135-0771, the proceeds from the sale of the home of the financial group, if the financial group intends to use them to buy another home (paragraphs (d)(A) and (d)(B) of this section set out the scope of use of excluded proceeds), are treated as follows:

(A) Principal payments, including lump-sum payments, are excluded for 12 full calendar months from the date of receipt.

(B) Interest payments are counted as unearned income.

(f) Proceeds from the sale of a home that are not reinvested in another home are treated as follows:

(A) Principal payments are counted as a resource.

(B) Interest payments are treated as unearned income.

(4) In the REF, REFM, and TANF programs:

(a) Proceeds from the sale of an excluded resource to the extent reinvested in another excluded resource are excluded as income and as a resource.

(b) All proceeds from the sale of the resource are counted as unearned income, unless excluded in subsection (a) of this section.

(5) In the SNAP program, proceeds from the sale of a resource are treated as follows:

(a) Proceeds from the sale of a resource (other than a home):

(A) Received on a monthly or other periodic basis are counted as unearned income.

(B) Received on a lump-sum basis:

(i) From the sale of an excluded resource, the amount reinvested in another excluded resource is excluded, and the remainder is counted as a resource.

(ii) From all other sales are counted as a resource.

(iii) If the proceeds put the benefit group (see OAR 461-110-0750) over the resource limit, the proceeds are counted as periodic or lump sum income (see OAR 461-140-0110 and 461-140-0120).

(b) Proceeds from the sale of the home of the financial group (see OAR 461-110-0530):

(A) If the financial group intends to use the proceeds to buy another home, are excluded for three months and counted as a resource thereafter.

(B) If not reinvested in another home, are treated as a resource.

(C) Interest received monthly or on another periodic basis from the sale of a home is counted as unearned income.

(c) Proceeds from the sale of a work-related asset including equipment and inventory, if the client is self-employed, the proceeds of the sale are treated as self-employment income (see OAR 461-145-0910).

(6) Costs of the type excluded under OAR 461-145-0920 are subtracted from proceeds counted as income under this rule.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.083, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685

ADMINISTRATIVE RULES

Stats. Implemented: ORS 409.010, 409.050, 410.010, 410.070, 410.080, 411.060, 411.070, 411.083, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685, 414.839
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-2001, f. & cert. ef. 6-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 24-2014, f. & cert. ef. 10-1-14; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16; SSP 25-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 12-27-16; SSP 31-2016, f. & cert. ef. 9-1-16; SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-145-0510

SSI

(1) In the ERDC and SNAP programs, if an individual is required by law to receive an SSI benefit through a representative payee, the representative's fee is excluded.

(2) In the ERDC program:

(a) A monthly SSI payment is counted as unearned income.

(b) Lump-sum SSI payments are counted according to OAR 461-140-0120.

(3) In the OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD), and QMB programs:

(a) Except in the QMB-BAS, QMB-SMB, and QMB-SMF programs, a retroactive SSI payment is excluded for nine months after the month of receipt. After the nine-month period, any remaining amount is a countable (see OAR 461-001-0000) resource. For the purposes of this section, a payment is retroactive if it is issued in any month after the calendar month for which it is intended.

(b) SSI payments received by members of the financial group (see OAR 461-110-0530) are counted as unearned income.

(4) In the REF, REFM, and TANF programs:

(a) SSI monthly and lump-sum payments are excluded if the recipient will be removed from the financial group (see OAR 461-110-0530) the month following receipt of the payment.

(b) An SSI lump-sum payment is excluded in the month received and the next month.

(5) In the SNAP program:

(a) A monthly SSI payment is counted as unearned income.

(b) A lump-sum SSI payment is excluded.

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.404, 411.816, 412.049, 413.085, 414.685
Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.816, 412.049, 413.085, 414.685, 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 39-1996(Temp), f. 11-27-96, cert. ef. 12-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16; SSP 25-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 12-27-16; SSP 31-2016, f. & cert. ef. 9-1-16; SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-145-0520

Stocks, Bonds and Other Securities

(1) Except as provided in sections (2) and (3) of this rule, the equity value (see OAR 461-001-0000) of mutual funds, and securities, including stocks, bonds, educational savings bonds, and certificates of deposit (CDs), is counted as a resource.

(2) In the OSIPM and QMB-DW programs, the value of a savings bond issued by the United States Department of the Treasury is excluded during the minimum retention period.

(3) In all programs except the OSIPM and QMB-DW programs, the value of a savings bond issued by the United States Department of the Treasury is excluded during the minimum retention period if the owner has received a denial of a request for a hardship waiver based on financial need.

(4) Interest and dividends on items covered by section (1) of this rule are treated as provided in OAR 461-145-0108.

Stat. Auth.: ORS 329A.500, 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685

Stats. Implemented: ORS 329A.500, 409.010, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-155-0580

Special Need; Laundry Allowances

(1) OSIP and OSIPM clients who are receiving SSI or home and community-based care (see OAR 461-001-0030) or have adjusted income less than the OSIPM program income standard under OAR 461-155-0250 are eligible for a laundry allowance if they have proven, excessive, coin-operated laundry facility costs and do not:

(a) Have their own laundry facilities; or

(b) Reside in an adult foster home, assisted living facility, nursing facility, residential care facility, or specialized living facility, unless the specialized living facility is apartment based.

(2) This allowance may not exceed the amount required to wash and dry the laundry of the client.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, 411.706

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 17-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 26-2013, f. & cert. ef. 10-1-13; SSP 25-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 12-27-16; SSP 31-2016, f. & cert. ef. 9-1-16; SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-155-0600

Special Need; Home Repairs; OSIP and OSIPM

In the OSIP and OSIPM programs, the Department will authorize a special need payment for home repairs for homeowners or buyers as a one-time special need within the following limits:

(1) The repairs must be needed to remove a physical hazard to the health and safety of the client.

(2) Payment for repairs authorized by this rule:

(a) Is limited to the least expensive means possible;

(b) May not exceed \$1,000 in any 24-month period; and

(c) When the home is jointly owned, is limited to a percentage of the cost of the repairs equal to the percentage of client ownership.

(3) The repairs must cost less than moving to another home.

(4) Payment is limited to the lowest possible cost that will provide adequate facilities. The client must provide three competitive bids for the repairs, unless there are not three providers of the service in the local area.

(5) Before approving payment for repairs or new installations, the Department must consider the use value and determine whether it is consistent with the service plan for the client to remain in the house.

(6) Providers of the repairs or new installations must ensure that the work being completed meets current building codes.

(7) Payment is only made for home adaptations performed by a licensed and bonded construction contractor.

(8) Repairs or replacements include, but are not limited to:

(a) Electrical wiring that does not constitute conversion to electrical space heating but that is needed:

(A) To avoid condemnation; or

(B) To remove a definite fire or shock hazard as documented by appropriate public officials.

(b) Plumbing — but not including the costs of plumbing items with which the house is not already equipped except that a toilet may be paid for when newly required by the creation or extension of a sewer district. Examples of what plumbing-related items may be covered include:

(A) Toilets and sinks.

(B) Cleaning or replacing septic tanks or cesspools.

(C) Installing sewer connections from house to street—but not sewer installation — if required by the creation of a new sewer district or the extension of an existing district.

(c) Repair or replacement of existing electric pumps for wells needed to continue the water supply. This does not include drilling a new well.

(d) Heating equipment — repair of heating stoves, furnaces and water heaters and, if repair is not possible, replacement with the least expensive adequate equipment.

(e) Repair of roofs.

(f) Repair or replacement of steps and repair of floors.

(9) A client with a life estate is not eligible for this special need allowance. The individual who will benefit from the life estate, following the death of the client, is considered responsible for the home repairs.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 413.085, 414.685

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.706, 413.085, 414.685

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 16-2002(Temp), f. & cert. ef. 11-1-02 thru 4-30-03; SSP 11-2003, f. & cert. ef. 5-1-03; SSP 18-2008(Temp), f. & cert. ef. 8-1-08 thru 1-28-09; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 25-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 12-27-16; SSP 31-2016, f. & cert. ef. 9-1-16; SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-155-0620

Special Need; Property Taxes

(1) OSIP and OSIPM clients who are homeowners or buyers are allowed a special need of one year in an amount equal to the cost of delinquent real property taxes, penalties and interest, if needed to prevent imminent foreclosure (see section (4) of this rule).

(2) Clients whose property taxes have not been paid and who are eligible for the Oregon Property Tax Deferral Program must opt to defer prop-

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erty taxes. If necessary, the state may provide payment for back property taxes, to bring the tax current, to allow clients to defer their ongoing property taxes.

(3) Clients who have not chosen to defer their property taxes and whose property taxes have not been paid will not receive a property tax special need payment unless an exception is authorized by the Department's Estate Administration Unit. The exception will be based on the value of the property, the potential of foreclosure, and the potential of an Estate Administration Unit recovery of such property.

(4) Imminent foreclosure is indicated by a formal notice of foreclosure.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.710, 413.085, 414.685
Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.706, 411.710, 413.085, 414.685
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 12-1993, f. & cert. ef. 7-1-93; SSP 25-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 12-27-16; SSP 31-2016, f. & cert. ef. 9-1-16; SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-155-0630

Special Need; Community Based Care; OSIPM

In the OSIPM program:

(1) A client is considered living in a community based care facility (see OAR 461-001-0000) if the client resides at one of the following care settings licensed by the Department:

- (a) Adult Foster Home.
- (b) Residential Care Facility.
- (c) Assisted Living Facility.
- (d) Specialized Living Facility.
- (e) Group Care Home.

(2) In determining eligibility for OSIPM for an individual receiving care in a 24-hour mental health residential care setting, such as an adult foster home, residential treatment home, residential treatment facility, or a secure treatment facility, the special need (see OAR 461-155-0010) is the amount of the service payment authorized by the Department and is added to the OSIP maintenance standard.

(3) If a client who meets the applicable income requirements begins living in a community based care facility:

(a) Payment for room and board may be authorized during the month of admission at the initial placement, limited to the approved rate.

(b) Room and board payments may be paid to the community based care facility during the temporary absence of a client if all of the following criteria are met:

(A) The absence occurs because the client is admitted to a hospital or nursing home.

(B) The Department determines the intent of the client to return to the community based care facility.

(C) The community based care facility is willing to accept the room and board payment.

(D) The client returns within the calendar month following the month in which the absence began.

(4) Spouses who each receive SSI and receive services in a community based care facility are eligible for a payment in the amount that equals the difference between the OSIPM standard for a one-person need group and the individual's total countable income. If one spouse has income above the OSIPM standard, the excess income is applied to the other spouse's countable income.

Stat. Auth.: ORS 409.050, 411.060, 411.404, 413.085, 414.685
Stats. Implemented: ORS 409.010, 411.060, 411.404, 413.085, 414.685
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 13-1994, f. & cert. ef. 7-1-94; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 17-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 26-2013, f. & cert. ef. 10-1-13; SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-155-0670

Special Need; Special Diet Allowance

(1) In the OSIPM, REF, REFM, SFPSS, and TANF programs, a client receiving any of the following is ineligible for a special diet allowance:

(a) Room and board.

(b) Residential care facility services or assisted living facility services.

- (c) Nursing facility services.
- (d) Adult foster care services.
- (e) An allowance for restaurant meals.
- (f) A commercial food preparation diet.

(2) An REF, REFM, SFPSS, or TANF client, or an OSIPM client receiving SSI, having an adjusted income less than the OSIPM program income standard under OAR 461-155-0250, or receiving in-home services

under OAR 411-030 is eligible for a special diet allowance if the following requirements are met:

(a) Any special diet to which the client must adhere must be clearly described in writing by a Department-approved medical authority (see OAR 461-125-0830), and the written description must be provided to the Department;

(b) The Department must receive verification that the client would be in an imminent life-threatening situation without the special diet, as documented by a Department-approved medical authority; and

(c) A licensed dietitian must describe in writing which particular food items required by the special diet are likely to exceed the cost of similar food items included in a regular diet and such a written description must be provided to the Department

(3) The amount of a special diet allowance is calculated as follows:

(a) Except as provided for in subsection (b) of this section, the special diet allowance is the amount by which the client's food costs, including the special diet, exceed the one-person SNAP Payment Standard (Thrifty Food Plan).

(b) In the OSIPM program, an exceptional amount must be authorized by the APD Financial Eligibility and Waiver Unit.

(4) Local management staff must approve or deny any request for a special diet allowance provided under subsection (3)(a) of this rule.

(5) Each special diet allowance must be reviewed and reauthorized annually.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 412.014, 412.049, 413.085, 414.685
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.706, 412.014, 412.049, 413.085, 414.685
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 25-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 12-27-16; SSP 31-2016, f. & cert. ef. 9-1-16; SSP 11-2017(Temp), f. 3-28-17, cert. ef. 4-1-17 thru 9-27-17; SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-155-0688

Prescription Drug Co-pay Coverage

In the OSIPM program for a client who is receiving SSI:

(1) The Department will provide a payment for all Medicare Part D or Veteran's Administration Health Care prescription co-pays if a client's co-pays exceed \$10 per month.

(2) Payment for Medicare Part D co-pays is limited to the current Low-Income Subsidy (LIS) program amounts for a fully dual eligible individual under 100 percent of the Federal Poverty Limit.

(3) If the payment exceeds \$30 per month, it must be approved by Aging and People with Disabilities central office staff.

Stat. Auth.: ORS 409.050, 411.060, 411.404, 411.706, 413.085, 414.685
Stats. Implemented: ORS 409.010, 411.060, 411.083, 411.404, 411.704, 411.706, 413.085, 414.685
Hist.: SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 33-2010(Temp), f. & cert. ef. 10-1-10 thru 3-30-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-160-0551

Income Deductions; Non-SSI OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) in the Community When There Are Children in the Household Group

(1) For purposes of this rule:

(a) "Child" means an unmarried individual, living with a natural or adoptive parent, and is:

(A) Under the age of 18; or

(B) Under the age of 22 and temporarily absent from the household while attending full-time secondary, postsecondary, or vocational-technical training designed to prepare the individual for employment.

(b) "Ineligible" means an individual who is not eligible to receive either SSI or TANF benefits.

(2) This rule is used to determine adjusted income (see OAR 461-001-0000) for individuals in the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs who:

(a) Live in the community;

(b) Are not assumed eligible (see OAR 461-135-0010);

(c) Do not receive home and community-based care (see OAR 461-001-0030); and

(d) Have at least one child (see subsection (1)(a) of this rule) in the household group (see OAR 461-110-0210).

(3) For an individual described in section (2) of this rule who is married to a spouse (see OAR 461-001-0000) who is ineligible (see subsection (1)(b) of this rule), the Department calculates the adjusted income of the

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individual under sections (4)(b) through (f) of this rule first. If the individual's adjusted income is greater than the OSIPM program adjusted income standard for a need group of one under OAR 461-155-0250, the individual is not eligible for OSIPM.

(4) To determine adjusted income for individuals described in section (2) of this rule, deductions from the countable (see OAR 461-001-0000) income of the financial group (see OAR 461-110-0530) are made in the following order:

(a) An allocation as described below:

(A) When an adult is applying, income is allocated (see paragraph (C) of this subsection) from an ineligible spouse included in the financial group to each ineligible child of the couple.

(B) When a child is applying:

(i) Income from ineligible parents is first allocated to each ineligible child in the household.

(ii) Second, the remaining income from subparagraph (i) of this paragraph is reduced as provided in subsections (b) through (f) of this section.

(iii) Third, the remaining income is reduced by the non-SSI OSIP and OSIPM adjusted income standard of the:

(I) Couple if both parents live with the child; or

(II) Individual if only one ineligible parent lives with the child.

(iv) Fourth, the remainder is deemed equally to each child applicant in the household.

(v) The income deemed to the child is added to the other income of the child and deductions are taken as described in subsections (b) through (f) of this section to calculate the child's adjusted income.

(C) The maximum amount of each allocation under paragraphs (A) and (B) of this subsection is the difference between the couple and the individual SSI Standard. The allocation for paragraphs (A) and (B) of this subsection is reduced by the other countable income of each ineligible child. An allocation is taken from unearned income first, and any remaining allocation is then taken from earned income.

(b) One standard deduction of \$20 from unearned income.

(A) This deduction may be taken from earned income if the individual has less than \$20 in unearned income.

(B) This deduction does not apply to a benefit based on need that is totally or partially funded by the federal government or by a nongovernmental agency.

(c) One standard earned income deduction of:

(A) \$65 for individuals in the OSIP-AD, OSIP-OAA, OSIPM-AD, and OSIPM-OAA programs; or

(B) \$85 for individuals in the OSIP-AB and OSIPM-AB programs.

(d) An income deduction for documented impairment-related work expenses or blind work expenses.

(e) One half of the remaining earned income.

(f) Deductions under a plan for self-support for individuals in the OSIP-AB, OSIP-AD, OSIPM-AB, and OSIPM-AD programs.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.083, 411.404, 411.706, 413.085, 414.685

Stats. Implemented: ORS 409.050, 410.070, 411.060, 411.070, 411.083, 411.404, 411.706, 413.085, 414.685

Hist.: SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 25-2008(Temp), f. 12-31-08, cert. ef. 1-1-09 thru 6-30-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 17-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 26-2013, f. & cert. ef. 10-1-13; SSP 15-2014, f. & cert. ef. 7-1-14; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16; SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-160-0590

Assessment of Resources; Community Spouse Provision

In the OSIP and OSIPM programs, this rule applies to an institutionalized spouse who began a continuous period of care on or after October 1, 1989.

(1) The Department assesses a couple's combined countable (see OAR 461-001-0000) resources at the beginning of each continuous period of care when requested by either spouse or by a representative acting on behalf of either spouse (see OAR 461-001-0000).

(2) The Department advises requesting parties of the verification needed to make the assessment. Verification of ownership interest and current value of resources must be provided. When verification is not provided within specified time frames, the Department advises requesting parties that an assessment may not be completed.

(3) Either spouse has a right to a contested case hearing:

(a) To contest the Department's determination of the couple's countable resources at the time of resource assessment.

(b) To contest the Department's method of computing the community spouse's resource allowance.

(c) To contest the Department's determination of the amount of the community spouse's resource allowance.

(4) In order to be timely, a hearing request completed about issues under section (3) of this rule must meet the requirements of OAR 461-025-0310.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 413.085, 414.685

Stats. Implemented: ORS 183.415, 411.060, 411.070, 411.083, 411.404, 411.704, 411.706, 413.085, 414.685

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-160-0620

Income Deductions and Client Liability; Long-Term Care Services or Home and Community-Based Care; OSIPM

In the OSIPM program:

(1) Deductions from income are made for an individual residing in or entering a long-term care facility or receiving home and community-based care (see OAR 461-001-0030) as explained in subsections (3)(a) to (3)(h) of this rule.

(2) Except as provided otherwise in OAR 461-160-0610, the liability of the individual is determined according to subsection (3)(i) of this rule.

(3) Deductions are made in the following order:

(a) One standard earned income deduction of \$65 is made from the earned income in the OSIPM-AD and OSIPM-OAA programs. The deduction is \$85 in the OSIPM-AB program.

(b) The deductions under the plan for self-support as allowed by OAR 461-145-0405.

(c) One of the following need standards:

(A) A \$60.18 personal needs allowance for an individual receiving long-term care services.

(B) A \$90 personal needs allowance for an individual receiving long-term care services who is eligible for VA benefits based on unreimbursed medical expenses. The \$90 allowance is allowed only when the VA benefit has been reduced to \$90.

(C) For an individual who receives home and community-based care:

(i) Except as provided in subparagraph (ii) of this paragraph, the OSIPM maintenance standard.

(ii) For an individual who receives in-home services, the OSIPM maintenance standard plus \$500.

(d) A community spouse (see OAR 461-001-0030) monthly income allowance is deducted from the income of the institutionalized spouse (see OAR 461-001-0030) to the extent that the income is made available to or for the benefit of the community spouse, using the following calculation.

(A) Step 1 — Determine the maintenance needs allowance. \$2,030 is added to the amount over \$609 that is needed to pay monthly shelter expenses for the principal residence of the couple. This sum or \$3,022.50 whichever is less, is the maintenance needs allowance. For the purpose of this calculation, shelter expenses are the rent or home mortgage payment (principal and interest), taxes, insurance, required maintenance charges for a condominium or cooperative, and the full standard utility allowance for the SNAP program (see OAR 461-160-0420). If an all-inclusive rate covers items that are not allowable shelter expenses, including meals or house-keeping in an assisted living facility, or the rate includes utilities, to the extent they can be distinguished, these items must be deducted from the all-inclusive rate to determine allowable shelter expenses.

(B) Step 2 — Compare maintenance needs allowance with community spouse's countable income. The countable (see OAR 461-001-0000) income of the community spouse is subtracted from the maintenance needs allowance determined in step 1. The difference is the income allowance unless the allowance described in step 3 is greater.

(C) Step 3 — If a spousal support order or exceptional circumstances resulting in significant financial distress require a greater income allowance than that calculated in step 2, the greater amount is the allowance.

(e) A dependent income allowance as follows:

(A) For a case with a community spouse, a deduction is permitted only if the monthly income of the eligible dependent is below \$2,030. To determine the income allowance of each eligible dependent:

(i) The monthly income of the eligible dependent is deducted from \$2,030.

(ii) One-third of the amount remaining after the subtraction in paragraph (A) of this subsection is the income allowance of the eligible dependent.

(B) For a case with no community spouse:

(i) The allowance is the TANF adjusted income standard for the individual and eligible dependents.

(ii) The TANF standard is not reduced by the income of the dependent.

(f) Costs for maintaining a home if the individual meets the criteria in OAR 461-160-0630.

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(g) Medical deductions allowed by OAR 461-160-0030 and 461-160-0055 are made for costs not covered under the state plan. This includes the public and private health insurance premiums of the community spouse and the individual's dependent.

(h) After taking all the deductions allowed by this rule, the remaining balance is the adjusted income.

(i) The individual's liability is determined as follows:

(A) For an individual receiving home and community-based care (except an individual identified in OAR 461-160-0610(4)), the liability is the actual cost of the home and community-based care or the adjusted income of the individual, whichever is less. This amount must be paid to the Department each month as a condition of being eligible for home and community-based care. In OSIPM-IC, the liability is subtracted from the gross monthly benefit.

(B) For an individual who resides in a nursing facility, a state psychiatric hospital, an Intermediate Care Facility for the Mentally Retarded, or a mental health facility, there is a liability as described at OAR 461-160-0610.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.706, 413.085, 414.065, 414.685
Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.706, 413.085, 414.065, 414.685
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 6-1999, f. & cert. ef. 4-22-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 8-2005(Temp), f. & cert. ef. 7-1-05 thru 10-1-05; SSP 9-2005(Temp), f. & cert. ef. 7-6-05 thru 10-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; 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 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 23-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 12-28-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13; SSP 16-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 25-2013, f. & cert. ef. 10-1-13; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 3-2014, f. 1-31-14, cert. ef. 2-1-14; SSP 15-2014, f. & cert. ef. 7-1-14; SSP 17-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; SSP 24-2014, f. & cert. ef. 10-1-14; SSP 4-2015, f. & cert. ef. 1-1-15; SSP 21-2015, f. & cert. ef. 7-1-15; SSP 24-2016, f. 6-29-16, cert. ef. 7-1-16; SSP 25-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 12-27-16; SSP 31-2016, f. & cert. ef. 9-1-16; SSP 44-2016, f. 12-7-16, cert. ef. 1-1-17; SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-160-0780

Determining Adjusted Income; OSIP-EPD and OSIPM-EPD

Adjusted income for OSIP-EPD and OSIPM-EPD is determined as follows:

- (1) All unearned income is excluded.
- (2) From countable (see OAR 461-001-0000) earned income, one standard income deduction of \$20 is deducted.
- (3) One standard earned income deduction of \$65, or \$85 for individuals whose disability is based on blindness, is deducted.
- (4) The remainder is divided by two.
- (5) Any costs allowed as employment and independence expenses, Impairment Related Work Expenses, or Blind Work Expenses as defined in OAR 461-001-0035 are deducted.
- (6) The remainder is adjusted income.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.706, 413.085, 414.687
Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.706, 413.085, 414.685
Hist.: AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

461-165-0030

Concurrent and Duplicate Program Benefits

(1) Except as noted in this rule, an individual may not receive benefits from the Department of the same type (that is, cash, medical, or SNAP benefits) for the same period as a member of two or more different benefit groups (see OAR 461-110-0750) or from two or more separate programs. Except as allowed in subsection (g) of this section, this provision includes a prohibition against an individual receiving TANF concurrently with another cash assistance program funded under Title IV-E of the Social Security Act.

(a) An individual may receive EA, HSP, and TA-DVS benefits and cash payments from other programs for the same time period.

(b) If a GA recipient becomes eligible for the TANF program, the GA recipient may not receive a TANF cash payment for themselves in the month a GA cash payment was received.

(c) A TANF recipient may receive ERDC for a child (see OAR 461-001-0000) in the household group (see OAR 461-110-0210), but who may not be included in the TANF filing group (see OAR 461-110-0310 and 461-110-0330).

(d) A child who is a member of an ERDC benefit group may also be a member of one of the following benefit groups:

(A) An OSIP-AB benefit group.

(B) A TANF benefit group when living with a nonneedy caretaker relative (see OAR 461-001-0000), if the caretaker relative is not the parent (see OAR 461-001-0000) of the child.

(C) A TANF benefit group when living with a needy caretaker relative receiving SSI.

(e) An individual in the SNAP program who leaves a filing group (see OAR 461-110-0310 and 461-110-0370) that includes an individual who abused them and enters a domestic violence shelter (see OAR 461-001-0000) or safe home (see OAR 461-001-0000) for victims of domestic violence (see OAR 461-001-0000) may receive SNAP benefits twice during the month the individual enters the domestic violence shelter or safe home.

(f) Except in the QMB-DW and QMB-SMF programs, a QMB recipient may also receive medical benefits from OSIPM, REFM, MAGI Child, MAGI Parent or Other Caretaker Relative, or MAGI Pregnant Woman. QMB-DW and QMB-SMF recipients may not receive any other medical assistance program offered under the state plan (see OAR 461-135-0730).

(g) An individual may receive Chafee (see OAR 413-030-0400 to 413-030-0455) and TANF benefits during the same time period. As of January 1, 2013, receipt of both Chafee and TANF benefits will not result in an overpayment.

(h) An individual receiving Employment Payments (see OAR 461-001-0025 and 461-135-1270) who becomes eligible for TANF in the same month may receive both benefits in the same month.

(i) An individual receiving JPI (see OAR 461-135-1260) who becomes eligible for Pre-TANF or TANF in the same month may receive both benefits in the same month.

(2) An individual may not receive benefits of the same type (that is, cash, medical, or SNAP benefits) for the same period from both Oregon and another state or tribal food distribution program, except as follows:

(a) Medical benefits may be authorized for an eligible individual if the individual's provider refuses to submit a bill to the Medicaid agency of another state and the individual would not otherwise receive medical care.

(b) Cash benefits may be authorized for an individual in the Pre-TANF program if benefits from another state will end by the last day of the month in which the individual applied for TANF.

(3) In the SNAP program, each individual who has been included as a member of the filing group in Oregon or another state is subject to all of the restrictions in section (2) of this rule.

(4) An REF or TANF filing group may not receive REF or TANF benefits during the same month that an individual in that group was enrolled in or received assistance from the Office of Refugee Resettlement Matching Grant Program.

Stat. Auth.: ORS 329A.500, 409.050, 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 412.124, 413.085, 414.025, 414.685, 414.826, 414.839
Stats. Implemented: ORS 329A.500, 409.050, 411.060, 411.070, 411.117, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 412.124, 413.085, 414.025, 414.685, 414.826, 414.839
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 29-2014(Temp), f. & cert. ef. 11-3-14 thru 5-1-15; SSP 12-2015, f. 3-16-15, cert. ef. 4-1-15; SSP 38-2015, f. 12-25-15, cert. ef. 1-1-16; SSP 15-2016, f. & cert. ef. 4-1-16; SSP 25-2016(Temp), f. 6-30-16, cert. ef. 7-1-16 thru 12-27-16; SSP 31-2016, f. & cert. ef. 9-1-16; SSP 10-2017, f. 3-24-17, cert. ef. 4-1-17; SSP 14-2017, f. 6-5-17, cert. ef. 7-1-17

Department of Justice Chapter 137

Rule Caption: Establishing paternity for self-alleged father
Adm. Order No.: DOJ 4-2017(Temp)
Filed with Sec. of State: 6-14-2017

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Certified to be Effective: 6-14-17 thru 12-10-17

Notice Publication Date:

Rules Amended: 137-055-3080

Subject: OAR 137-055-3080 is amended to remove an incomplete definition that defines when legal proceedings for adoption of the child are pending. The existing definition is based on outdated terminology and processes, and is not necessary for determining whether providing services to the self-alleged father is in the best interests of the child.

Rules Coordinator: Carol Riches—(503) 378-5987

137-055-3080

Responsibility of Administrator to Establish Paternity at Request of Self-Alleged Father

(1) For purposes of this rule, self-alleged father means a man who both:

(a) Claims that he is, or possibly is, the biological father of a child born out of wedlock as defined in ORS 109.124; and

(b) Wishes to have paternity legally established for the child, establishing himself as the legal father.

(2) The administrator is responsible for pursuing establishment of paternity at the request of a self-alleged father, subject to all of the following:

(a) The self-alleged father must either:

(A) Be eligible for services under ORS 25.080, because he is receiving TANF cash assistance or Medicaid assistance for the child born out of wedlock; or

(B) Complete an application for services as provided under ORS 25.080.

(b) Unless otherwise prohibited under this rule, the administrator will:

(A) Take all appropriate steps to determine if the self-alleged father is the biological father; and

(B) Pursue appropriate action to legally establish paternity unless evidence indicates that he is not the biological father.

(c) The administrator will not pursue action to establish paternity under this section in any case where:

(A) Adoption of the child is final;

(B) Paternity has already been established for the child, or;

(C) Paternity is presumed under ORS 109.070, the husband and wife are cohabiting and they do not consent to the challenge.

(d) The administrator will not pursue action to establish paternity under this rule if the Child Support Program (CSP) Director has determined that such action would not be in the best interests of the child, in accordance with section (4) of this rule.

(3)(a) When a self-alleged father requests the administrator establish his legal paternity for a child, the administrator will send written notification by first class mail to the last-known address of the mother and (if a separate party) legal guardian of the child. Further, if the administrator knows or is informed that legal proceedings for adoption of the child are pending, the administrator will also send written notification to the licensed private agency handling the adoption, or if none exists, to DHS;

(b) If the mother and (if a separate party) legal guardian cannot readily be found, the enforcing agency administrator will make a diligent attempt to locate the party. A diligent attempt includes but is not limited to submitting the case to the Division of Child Support for state parent locator services. If unable to locate the mother and legal guardian within 30 days, the administrator will proceed to process the case as described in section (7) of this rule without the notice described in this section;

(c) The written notification must state the following:

(A) That the self-alleged father has asked the administrator for establishment of paternity services;

(B) That if legal proceedings for adoption of the child are pending, or if the child's mother (or legal guardian if a separate party) alleges that the child was conceived due to rape or incest, the CSP Director will determine whether establishing paternity is in the best interests of the child, on the basis of the responses the CSP Director receives to the written notification;

(C) That a copy of any response to the notification the CSP Director receives will be sent to the self-alleged father, and that the self-alleged father will then have an opportunity to respond to the allegations. The administrator will ensure that the address of the mother and/or guardian is deleted from any written material it sends to the self-alleged father;

(D) The factors the CSP Director will consider, set out in section (4) of this rule, in determining whether establishing paternity would be in the best interest of the child;

(E) That the mother, legal guardian, and adoption agency or DHS child welfare program if appropriate under this rule, has 15 days to respond in writing to the written notification;

(F) That the self-alleged father has 15 days to respond to an allegation or response received by the CSP Director;

(G) That if any of the parties listed in paragraph (E) or (F) of this subsection does not respond to the written notice or allegation within 15 days, the CSP Director will make a determination based on the responses received;

(H) That if the CSP Director determines that establishing paternity would not be in the best interests of the child, this decision:

(i) Means only that the administrator will not pursue action to establish paternity; and

(ii) Does not preclude the self-alleged father from pursuing establishment of paternity on his own, without the assistance of the administrator.

(4) In any case where legal proceedings for adoption of the child are pending, or where the child was conceived due to alleged rape or incest, the CSP Director is responsible for determining whether action to establish paternity would be in the best interests of the child.

(a) If the CSP Director determines that action to establish paternity would not be in the best interests of the child, the administrator will take no further action to establish paternity for the self-alleged father;

(b) A signed written statement from the mother or legal guardian of the child, stating that the child was conceived as a result of rape or incest, is sufficient reason for the CSP Director to determine that establishing paternity would not be in the best interests of the child, unless such statement is disputed or denied by the self-alleged father, subject to the following:

(A) If the self-alleged father does not respond to the copy of the allegation or response the CSP Director receives as provided in subsections (3)(a) through (3)(c) of this rule, the CSP Director will make a determination by default based on the mother's or legal guardian's statement;

(B) If the self-alleged father does respond and acknowledges that the child was conceived by rape or incest, the CSP Director must determine that establishing paternity would not be in the best interests of the child;

(C) If the self-alleged father does respond and denies that the child was conceived by rape or incest, the CSP Director will decide whether to pursue action to establish paternity. The CSP Director will consider factors including, but not limited to:

(i) Whether a police report was filed;

(ii) Whether the self-alleged father was convicted or acquitted of rape or incest charges;

(iii) Whether other persons have information that the child was conceived due to rape or incest;

(iv) Any other factors known or provided to the CSP Director that would support or refute the veracity of the rape or incest allegation;

(v) Whether establishing paternity would be in the best interest of the child, considering the factors listed in subsection (c) of this section;

(vi) The CSP Director's decision in this matter is limited to only whether the administrator will pursue action to establish paternity, and is in no way to be construed or intended as a determination or accusation of whether the self-alleged father is in fact guilty or not guilty of rape or incest;

(c) When the CSP Director finds that legal proceedings for adoption of the child are pending, the CSP Director will consider the following factors in determining whether establishing paternity would be in the best interests of the child:

(A) The nature of the relationship or contacts between the child and the self-alleged father. This determination may consider whether the child has lived with the self-alleged father or has had frequent visitation with the self-alleged father, thereby establishing a substantial parent-child relationship;

(B) The degree of parental commitment by the self-alleged father to the child. This determination may consider whether the self-alleged father has attempted to stay in contact with the child, and if such attempts would continue or increase in the future;

(C) The degree to which the self-alleged father has contributed or attempted to contribute, consistent with his ability, to the support of the child. This determination may consider the nature and extent of such support, and if such support would continue or increase in the future;

(D) If there is a legal relationship between the child and the self-alleged father, or if there has been an attempt to establish such a legal relationship through filiation proceedings, custody actions, voluntary acknowledgment of paternity, or similar actions. This determination may consider

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Department of Revenue Chapter 150

whether the self-alleged father has had an opportunity to establish a legal relationship prior to the initiation of adoption proceedings;

(E) Whether good reasons exist that would excuse the self-alleged father's failure to establish a relationship, or stay in contact with the child, or contribute to the support of the child, or attempt to establish a legal relationship with the child. Such reasons may include, but are not limited to, the self-alleged father's late awareness of the mother's pregnancy or of the child's birth.

(5) Absent judicial review, the decision of the CSP Director is final with regard to any responsibility of the administrator to pursue establishment of paternity.

(6) No provision of this rule prohibits the self-alleged father from pursuing establishing paternity on his own, without the assistance of the administrator.

(7) If the CSP Director determines (when a determination by the CSP Director is necessary under this rule) that the administrator may pursue action to establish paternity at the request of a self-alleged father, or if the administrator does not receive a written assertion requiring such a determination by the CSP Director under this rule, the administrator will proceed on the case as follows:

(a) The administrator will make diligent efforts to provide the mother of the child, unless she is deceased, with actual notice of the action to establish paternity. Notice must be by personal service upon the mother. Diligent efforts include mailing of the notice or petition and summons by first class mail to all reasonably known recent addresses with a request that the mother acknowledge service on the form provided and also mailing the same notice to one or more of the maternal grandparents, if known, addressed to them individually and requesting that they forward the notice and acknowledgment form to the mother;

(b) Notwithstanding the requirement of subsection (a) of this section, no action to establish paternity under this section may be delayed more than 60 days from the self-alleged father's initial request because of the enforcing agency's inability to provide actual notice to the mother of the child or children;

(c) If the mother of the child or children cannot be served with notice of the action or if the mother is deceased, the enforcing agency will not take an order establishing paternity unless parentage tests have been completed which fail to exclude the self-alleged father, and have a cumulative paternity index of at least 99;

(d) In any action to establish paternity in which the administrator cannot serve the child's mother, or when the mother is deceased, the administrator will request that the court appoint a willing, qualified and suitable person to be a guardian ad litem for the child. If no relative or other person agrees to such appointment, the administrator will request that an attorney be appointed for this purpose;

(e) When an order establishing paternity has been taken in accordance with this section without service of the notice or petition and summons on the mother, the administrator will mail a copy of the final order to the mother by first class mail to the most recent contact addresses in the case record, DHS=TANF files and Oregon Driver and Motor Vehicle files marked please forward, address correction requested. In addition to such mailing, the administrator will, for a period of six months from the date of the final order, continue attempts to locate the mother and personally serve her with a copy of the final order establishing paternity.

(8) All other provisions of this rule notwithstanding, the administrator cannot require the child's mother (or other custodial adult) to cooperate with efforts to establish paternity, and the administrator will not assess a penalty for not cooperating, in any case where a finding that the child's mother (or other custodial adult) is exempt from cooperating due to good cause, pursuant to federal law at 42 U.S.C. 654(29) and 42 U.S.C. 666(a)(5)(B)(i), is either currently in effect or is pending. In any such case, the administrator need not proceed further on behalf of the self-alleged father if it determines that there is no further effective action the administrator can take on behalf of the self-alleged father.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.080

Hist.: AFS 23-1993, f. & cert. ef. 10-19-93; AFS 3-1994, f. & cert. ef. 2-1-94; AFS 12-1996, f. & cert. ef. 4-1-96; AFS 9-1998, f. 5-29-98, cert. ef. 6-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0068; AFS 4-2001, f. 3-28-01, cert. ef. 4-1-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3080; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3080; DOJ 1-2008(Temp), f. & cert. ef. 1-2-08 thru 3-31-08; DOJ 6-2008, f. & cert. ef. 4-1-08; DOJ 3-2009, f. & cert. ef. 4-1-09; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 4-2017(Temp), f. & cert. ef. 6-14-17 thru 12-10-17

Rule Caption: Changes to rules: Small claims procedure at Tax Court's Magistrate Division, interest start date

Adm. Order No.: REV 1-2017

Filed with Sec. of State: 5-31-2017

Certified to be Effective: 6-1-17

Notice Publication Date: 4-1-2017

Rules Amended: 150-305-0150, 150-314-0240

Subject: 150-305-0150 - Amend to delete references to the defunct small claims procedure at the Magistrate Division of the Oregon Tax Court.

150-314-0240 - Amend to clarify the interest start date for personal, corporate, and estate tax refunds.

Rules Coordinator: Lois Williams—(503) 945-8029

150-305-0150

Defines Order for Purposes of Interest Rate Increase

(1) If tax is not paid within 60 days after the date an individual is notified of a tax delinquency, the interest rate imposed by ORS 305.220 is increased by one-third of one percent per month (4% annually). The interest is also increased after 60 days for tax due, if not paid or appealed, on a notice of assessment following a deficiency, or a final order issued by the Tax Court or Supreme Court that affirms the deficiency.

(2) For purposes of ORS 305.222, an order is defined as:

(a) Any Decision or Stipulated Judgment issued by the Magistrate Division of the Oregon Tax Court,

(b) A Judgment issued by the Regular Division of the Oregon Tax Court, or

(c) A Judgment issued by the Oregon Supreme Court.

Example 1: Clyde timely files his current year return on April 15, but does not pay the tax shown as due. The department processes the return and sends a notice of tax due on April 28. Additional interest is charged beginning on the 61st day (June 28) after the department issues the notice.

Example 2: Assume the same facts as Example 1, except the return is adjusted in processing and Clyde receives a notice of deficiency for additional tax due. No payment is received and a notice of assessment is issued 30 days later. The interest rate is increased beginning 61 days from the assessment date if the tax is not paid or appealed.

Example 3: Assume the same facts as Example 2, except that Clyde appeals to the Magistrate Division of the Oregon Tax Court. The Magistrate Division issues a Decision that upholds the assessment. Additional interest is charged beginning 61 days after the date of the Decision, if the tax is not paid and no appeal is filed.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 305.222

Hist.: REV 8-2002 f. & cert. ef. 12-31-02; Renumbered from 150-305.222, REV 47-2016, f. 8-13-16, cert. ef. 9-1-16; REV 1-2017, f. 5-31-17, cert. ef. 6-1-17

150-314-0240

Refunds Generally

(1) Refund Limitations - Time and Amount.

(a) If the amount of the tax imposed by the statute is less than the amount paid by the taxpayer and the taxpayer does not then owe any other tax or liability to the State of Oregon, such overpayment must be refunded. A refund may be made under ORS 314.415 in compliance with a claim for refund filed by the taxpayer under ORS 305.270 or by correction of the return by the department. To issue a refund based on an audit examination, an auditor's report showing the amount of refund must be completed and approved prior to the expiration of the applicable period set forth in the following paragraph.

(b) Except as provided in subsections (3), (4), (5) and (6) of ORS 314.415, a refund or credit may not be granted unless a correction by the department is approved or a claim is filed within three years after the return is filed, or within two years after part or all of the tax is paid, whichever period expires later. Under ORS 316.417(1) and 317.504, a return filed before the due date is considered as having been filed on the due date.

(c) If there is an amount due from the taxpayer, the refund otherwise allowable will be applied to the balance due. An appeal from an additional assessment paid by the taxpayer to stop the running of interest cannot be classed as a "refund" claim. Except as provided in ORS 314.415(5), the amount refunded cannot exceed the amount of tax paid during the applicable period of limitation before a correction by the department is approved or the filing of the claim.

Example: A taxpayer files a 2002 return on April 15, 2003, showing tax due in the amount of \$100 and pays that amount at the time the return is filed. On April 1, 2006, additional tax of \$50 is assessed by the department on the 2002 return and is paid by the taxpayer on May 1, 2006. Within two years the taxpayer files a claim for refund based on items not previously adjusted on the 2002 return. The refund claim shows an overpayment of \$75 of the total \$150 paid. The refund claim is limited to \$50, the

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sum paid within the open period preceding the filing of the claim.

(2) Interest Start Date.

(a) When a refund of individual income tax is attributable to tax withheld by an employer, or when a refund of individual income tax, corporate excise tax, or corporate income tax is attributable to estimated taxes, the interest start date is 45 days after the return was due or 45 days after the return was filed, whichever is later.

(b) The interest start date for a refund of estate tax is 45 days after the return was due, 45 days after the original return was filed or 45 days after the tax was paid, whichever is later.

(c) The interest start date for a refund not described in subsection (2)(a) or (2)(b) of this rule is 45 days after the return was due or 45 days after the tax was paid, whichever is later.

(d) See OAR 150-305-0142 Interest on Refunds for information about interest periods and interest rates.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.415

Hist.: 1958-59; 12-19-75; 12-31-77; 12-31-82; RD 10-1986, f. & cert. ef. 12-31-86; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; Renumbered from 150-314.415(1) by REV 10-2006, f. 12-27-06, cert. ef. 1-1-07; Renumbered from 150-314.415, REV 31-2016, f. 8-12-16, cert. ef. 9-1-16; REV 1-2017, f. 5-31-17, cert. ef. 6-1-17

Rule Caption: Rules pertaining to administration of transit taxes also apply to local marijuana taxes.

Adm. Order No.: REV 2-2017

Filed with Sec. of State: 5-31-2017

Certified to be Effective: 6-1-17

Notice Publication Date: 4-1-2017

Rules Amended: 150-305-0360

Subject: 150-305-0360 - 2016 legislation authorized the Department of Revenue to enter into intergovernmental agreements with localities to administer local marijuana taxes. This rule change is needed to clarify that the provisions of ORS 305.620 apply to both transit and local marijuana taxes.

Rules Coordinator: Lois Williams—(503) 945-8029

150-305-0360

Rules Application

(1) "Local marijuana tax" means a tax or fee authorized under ORS 475B.345 on the sale of marijuana items that are sold within an area subject to a city's jurisdiction or an unincorporated area subject to a county's jurisdiction by a person that holds a license under ORS 475B.110.

(2) Unless the context requires otherwise, the department will apply the same rules to administer transit district payroll tax programs as are used in the administration of the withholding tax program. See rules adopted under ORS 316.162 to 316.212. In addition, the provisions of rules adopted pursuant to ORS Chapters 305 and 314 as to the audit and examination of reports and returns, determination of deficiencies, assessments, claims for refund, conferences, appeals, and the procedures relating thereto, shall apply to the determination of taxes, penalty, and interest imposed under transit district payroll tax programs.

(3) Unless the context requires otherwise, the department will apply the same rules to administer local marijuana taxes as are used in the administration of the marijuana tax program. See rules adopted under ORS 475B.705 to 475B.760. In addition, the provisions of rules adopted pursuant to ORS Chapter 475B as to the audit and examination of reports and returns, determination of deficiencies, assessments, claims for refund, conferences, appeals, and the procedures relating thereto, shall apply to the determination of taxes, penalty, and interest imposed under local marijuana taxes.

Stat. Auth.: ORS 305.100, 305.620, 475B.750

Stats. Implemented: ORS 305.620, 475B.750

Hist.: RD 10-1983, f. 12-20-83, cert. ef. 12-31-83; RD 1-1997(Temp), f. 6-13-97, cert. ef. 7-4-97 thru 12-31-97; RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; Renumbered from 150-305.620(1)-(A), REV 49-2016, f. 8-13-16, cert. ef. 9-1-16; REV 76-2016(Temp), f. 12-20-16, cert. ef. 12-21-16 thru 6-18-17; REV 2-2017, f. 5-31-17, cert. ef. 6-1-17

Rule Caption: Personal Income Tax General - Updating Language

Adm. Order No.: REV 3-2017

Filed with Sec. of State: 5-31-2017

Certified to be Effective: 6-1-17

Notice Publication Date: 4-1-2017

Rules Amended: 150-316-0060, 150-316-0120, 150-316-0150, 150-316-0235, 150-316-0470

Subject: 150-316-0060 - Taxable Income of Resident. Replacing outdated language relating to spouses in a marriage.

150-316-0120 - Credit for Political Contributions. Replacing outdated language relating to spouses in a marriage.

150-316-0150 - Separate or Joint Federal Returns for Spouses in a Marriage. Replacing outdated language relating to spouses in a marriage.

150-316-0235 - Withholding: Basis of Amount Withheld. Replacing outdated language relating to spouses in a marriage.

150-316-0470 - Allocation of Joint Estimated Tax Payments. Replacing outdated language relating to spouses in a marriage.

Rules Coordinator: Lois Williams—(503) 945-8029

150-316-0060

Taxable Income of Resident

(1) Definition. The taxable income of a resident of this state is taxable income as defined in the laws of the United States, modified and adjusted by ORS Chapter 316 and other laws of this state applicable to personal income taxation. Such laws have the general effect of incorporating all the provisions of the federal Internal Revenue Code with regard to the measurement of personal taxable income except as otherwise specifically provided by Oregon law. For example, the Oregon standard deduction is not deductible in the same amount as the federal standard deduction amount.

(2) Oregon Adjusted Gross Income Defined.

(a) For tax years beginning prior to January 1, 1985, Oregon adjusted gross income is federal adjusted gross income as defined under IRC Section 62 as of the dates specified in ORS 316.012. Oregon adjusted gross income incorporates any differences between the federal definition of adjusted gross income and the Oregon definition of adjusted gross income for any given year.

(b) For tax years beginning after December 31, 1984, Oregon adjusted gross income is federal adjusted gross income without any of the modifications, additions, or subtractions required under ORS Chapter 316.

(3) Transfers of property between spouses or incident to divorce. The transfer of property from one spouse to another incident to a divorce property settlement is considered a nontaxable event for Oregon purposes. The basis of the property transferred in the hands of the transferor shall carry over and become the basis of the property in the hands of the transferee.

(4) Community property income. An Oregon resident whose spouse resides in a community property state is taxable upon the share of the spouse's community property income that is considered earned by the Oregon resident according to the laws of the community property state. Credit for taxes paid to another state under ORS 316.082 is allowed to Oregon residents whose share of community property income is taxed by Oregon and another state. See ORS 316.082 and the rules thereunder for computation of the credit.

Example 1: Van and Lisa are married. Lisa lives and works in Salem, Oregon. Van lives and works in Seattle, Washington. Van and Lisa each deposit their separate paychecks into a joint Oregon checking account that is used to pay living expenses for both of them. They visit each other frequently. They are not permanently separated by a legal decree and have no intention of filing for divorce. Under Washington law, all property acquired after marriage by either spouse in the marriage or both, other than by gift, bequest or inheritance, is community property. Because Van's wages are community property under Washington law, and Van and Lisa are not permanently separated, Lisa must include one-half of Van's Washington earnings in Oregon income. Lisa may not claim a credit for taxes paid to another state because there is no state income tax imposed on the earnings by both Oregon and Washington.

Example 2: Juan and Maria are married. Juan receives a promotion and moves to Boise, Idaho, to live and work until retirement. Maria stays in Medford, Oregon, and continues her job until she can retire in five years. They are not permanently separated by a legal decree and have no intention of filing for divorce. Under Idaho law, earnings of spouses domiciled in Idaho are community property absent a written agreement that provides otherwise. Since Juan and Maria are not permanently separated and have not agreed to treat their earnings as separate income, Maria must include one-half of Juan's Idaho wages in her Oregon income. Maria would be entitled to claim credit for taxes paid to another state based on the income that is taxed by both Oregon and Idaho.

(5) Distribution of a trust's income accumulation. See ORS 316.737 and OAR 150-316-0575 for the treatment of trust income accumulation distributions.

(6) Retirement benefit plans.

(a) Resident taxpayers must include in Oregon taxable income all amounts received from retirement benefit plans. For tax years beginning on or after January 1, 1996, and before January 1, 2000, nonresidents are not taxed by Oregon on retirement income. For tax years beginning after December 31, 1999, nonresidents who retain their Oregon domicile are taxable on Oregon source retirement income. See ORS 316.127(a).

(b) Conversion of a traditional IRA to a Roth IRA under IRC Section 408A is deemed a distribution for federal tax purposes. The amount includ-

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ed in federal taxable income is taxable to an Oregon resident. A taxpayer who is an Oregon resident for a part of tax year 1998 and who elects to recognize the conversion amount over four years, must include a prorated amount in Oregon income. If the election to recognize income over four years is not made, the converted amount must be included in income if the taxpayer is an Oregon resident at the date of conversion.

Example 1: Sam was a resident of Nevada at the time he converted his traditional IRA to a Roth IRA in 1998. The total amount of the 1998 distribution was \$2,000. Sam will recognize the IRA distribution over the four-year period beginning with 1998. In Oct. 1, 1999, Sam established permanent residency in Oregon. The 1998 IRA distribution will be recognized in taxable income as follows:

Year — Federal — Oregon
1998 — \$500 — \$0
1999 — \$500 — \$125 (prorated for Oregon residency period)
2000 — \$500 — \$500
2001 — \$500 — \$500

(c) Conversion of traditional IRAs to Roth IRAs after 1998. For tax years after 1998, converted amounts must be included in Oregon taxable income if, at the time the conversion is made, the taxpayer is an Oregon resident.

[Publications: The publication(s) referred to or incorporated by reference in this rule is available from the Department of Revenue pursuant to ORS 183.360(2) and ORS 183.355(6).]
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 316.048
Hist.: 1-69; 12-70; 11-73; 12-19-75; 1-1-77; TC 9-1978, f. 12-5-78, cert. ef. 12-31-78, Renumbered from 150-316.062; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 10-1986, f. & cert. ef. 12-31-86; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; REV 7-1998, f. 11-13-98 cert. ef. 12-31-98; REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; REV 1-2001, f. 7-31-01, cert. ef. 8-1-01; Renumbered from 150-316.048, REV 60-2016, f. 8-15-16, cert. ef. 9-1-16; REV 3-2017, f. 5-31-17, cert. ef. 6-1-17

150-316-0120

Credit for Political Contributions

(1) In General: To qualify for the political contribution credit, the contribution must be a voluntary contribution of money made to one of the following:

(a) A major political party or its political committees, or a minor political party or its political committees;

(b) A candidate for federal, state or local office; or

(c) A political committee. Each of these categories is discussed in more detail in the following sections.

(2) Contributions to political parties. For purposes of this rule, a major political party is defined in ORS 248.006. A minor political party is defined in ORS 248.008. Contributions to any of these parties, or their political committees, qualify for the credit.

Example 1: In 2012, Jim contributes \$50 to the Republican National Party, \$50 to the Republican Committee to Re-elect U.S. Senators, \$50 to the Democratic National Party Committee to Re-elect Senator Jones of California and \$50 to the Libertarian Party. All contributions qualify for the political contribution credit. Jim will be able to claim a credit of \$50 on his 2012 income tax return. If he files a joint return with his spouse, they may claim a \$100 credit.

(3) Contributions to candidates. Qualifying contributions are those made directly to the candidate or the principal campaign committee of the candidate.

(a) A principal campaign committee (PCC) means a candidate's political committee. The PCC must have met the filing requirements contained in ORS Chapter 260.

(b) Candidates do not have to appear on a ballot in this state in the same year the contribution is made for the credit to be claimed. However, if the candidate is not on a ballot, at least one of the following must have occurred in the same year the contribution is made:

(A) A prospective petition is filed;

(B) A declaration of candidacy is filed;

(C) A certificate of nomination is filed; or

(D) A designation of a principal campaign committee is filed.

Example 2: Amanda filed a declaration of candidacy in November 2011 and appeared on the ballot for the 2012 primary election as a candidate for Oregon state senator. Contributions made in 2011 or 2012 to Amanda, or her principal campaign committee, will qualify for the credit.

(4) Contributions to political committees. Contributions made to a political committee will qualify only if the committee has certified the name of its treasurer to the appropriate filing officer in the manner provided in ORS Chapter 260. As used in this rule, "filing officer" means:

(a) For a political committee whose purpose is to support or oppose a candidate or measure in an election concerning an irrigation district formed under ORS Chapter 545, the county clerk or secretary of the irrigation district as provided under ORS 260.005(9)(b).

(b) For all other purposes, the Secretary of State as provided under ORS 260.005(9)(a).

(c) Contributions may qualify under this provision even though:

(A) No measure appears on the ballot in the same year the contribution is made;

(B) The contribution is made to reduce a deficit from a prior year; or

(C) The political committee is formed by a national committee.

Example 3: Royal is a member of the Association of Certified Engineers of America. The association forms a Political Action Committee (PAC) in Oregon, certifies the name of its treasurer to the Secretary of State, and solicits voluntary donations from individual members. The PAC states in its material that it is organized and operated to support or oppose any political candidates or measures the directors of the association determine will impact its members. Contributions made to the PAC will qualify for the credit.

Example 4: Debra belongs to a trade union that engages in political activities. The union informs Debra that a certain percentage of her monthly dues is used for political purposes. No part of her dues payment will qualify for the credit because it is not a voluntary payment of money to a candidate or a political committee.

Example 5: Same facts as Example 4, but the union also solicits voluntary political contributions from its members. These funds are placed directly into a separate PAC, which is not subsidized in any way by the union, and are used for political activities. In January 1999, Debra signs up for a payroll deduction of \$5 to be taken from her monthly checks. She may claim a credit of up to \$50 on her tax return, or a credit of \$60 (12 months x \$5) if she files jointly with her spouse.

(5) The amount of the contribution must be reduced by the fair market value of any items or services received in exchange for the contributions.

Example 6: A political committee solicits donations and offers T-shirts in return for contributions of \$50 or more. Douglas contributes \$50 and receives a T-shirt valued at \$10. He may claim a political contribution credit of \$40.

Example 7: Same facts as Example 6, except that Douglas contributes \$100. He is entitled to a credit of \$50 on a single return, or \$90 on a joint return.

(6) A partnership or S corporation may make political contributions on behalf of its partners or shareholders. The credit may be claimed on the individual tax return, subject to all of the limitations in ORS 316.102 and this rule.

(7) Proof of the credit, such as a canceled check or receipt, should not be attached to the tax return but should be kept with the taxpayer's records. Upon audit or examination, the taxpayer must provide documentation to verify the credit.

Stat. Auth.: ORS 305.100 & 316.102

Stats. Implemented: ORS 316.102

Hist.: 1-69; 12-70; 11-73; 12-19-75; 12-19-77; TC 9-1978, f. 12-5-78, cert. ef. 12-31-78; TC 19-1979, f. 12-20-79, cert. ef. 12-31-79; RD 6-1983(Temp), f. 12-20-83, cert. ef. 12-31-83; RD 2-1984, f. & cert. ef. 2-21-84; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; REV 10-2013, f. 12-26-13, cert. ef. 1-1-14; Renumbered from 150-316.102, REV 62-2016, f. 8-15-16, cert. ef. 9-1-16; REV 3-2017, f. 5-31-17, cert. ef. 6-1-17

150-316-0150

Separate or Joint Federal Returns for Spouses in a Marriage

(1) For tax years beginning on or after January 1, 1987, ORS 316.122 contains exceptions to the general rule that the filing status of the federal return, whether joint or separate, determines the filing status on the Oregon return. If a joint federal income tax return is filed and one or both of the spouses is not a full-year resident, each spouse must file a separate state return unless they elect to file a joint state return.

(2) The income to be included by the spouses in computing their joint Oregon taxable income is determined as follows:

(a) A full-year resident spouse shall include all income received during the year as determined in OAR 150-316-0060.

(b) A part-year resident spouse shall include:

(A) For the portion of the year the spouse is a resident all income as determined under OAR 150-316-0060.

(B) For the portion of the year the spouse is a nonresident the Oregon source income as determined under ORS 316.127 and the rules thereunder.

(c) A nonresident spouse shall include all Oregon source income as determined under ORS 316.127 and the rules thereunder.

(d) The Oregon source net operating loss of a part-year resident included in the filing of a joint return is determined as follows:

(A) For the portion of the year the spouse is a resident any loss determined under OAR 150-316-0035.

(B) For the portion of the year the spouse is a nonresident any loss determined under OAR 150-316-0035 as it relates to nonresidents.

(3) This election to file a joint state return may not be revoked after the due date of the return for the tax year. An amended return filed prior to the due date is considered an original return and may contain a change from a joint return to separate returns.

(4) Spouses may change from separate state returns to a joint state return within the time prescribed by law for filing amended returns. The change to a joint return shall not be made if the change would not be allowable under Internal Revenue Code Section 6013(b).

(5) In the event the election to file a joint return for Oregon tax purposes is not made, then each spouse with income subject to Oregon tax

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must compute an “as if” federal return on the basis of the separate federal adjusted gross income of the taxpayer.

(6) If the taxpayers can clearly segregate their itemized deductions, each taxpayer may claim his or her own deductions instead of apportioning them by income. The burden of proof for substantiating the segregation rests with the taxpayer. See OAR 150-316-0555 for treatment of itemized deductions on separate returns when one spouse is not required to file in Oregon.

(7) If a joint federal return has been filed, the federal tax deducted in arriving at Oregon taxable income on the separate state return shall be computed by apportioning the total accrued federal tax liability of both spouses. Apportionment shall be made on the basis of the separate federal adjusted gross incomes of both spouses. The result is subject to the \$1,500 limitation of the federal tax deduction for each spouse for tax years beginning on or after January 1, 1987. See OAR 150-316-0535.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.122

Hist.: 12-70; 11-73; 12-19-75; TC 9-1978, f. 12-5-78, cert. ef. 12-31-78; RD 12-1984, f. 12-5-84, cert. ef. 12-31-84, Renumbered from 150-316.122(3)?; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; Renumbered from 150-316.122, REV 62-2016, f. 8-15-16, cert. ef. 9-1-16; REV 3-2017, f. 5-31-17, cert. ef. 6-1-17

150-316-0235

Withholding: Basis of Amount Withheld

(1) Remuneration includes merchandise, stocks, bonds, room, board, or other consideration passing to the employee in payment for services.

(2) The cash value must be based upon sound principles and the Department reserves the right to determine standard valuations for such items as meals, lodging, etc. If room is furnished in addition to board, no additional value will ordinarily be placed upon the room. If room and board are furnished at hotels, resorts or lodges, or if a room only, an apartment, a house or any other consideration is provided, the value, for withholding tax purposes, will be the actual value of this remuneration. (Living quarters or meals furnished to the employee for the convenience of the employer are excluded from income pursuant to section 119 of the IRC and the regulations pertaining thereto.)

(3) Amounts paid as reimbursable expenses to an employee are not subject to withholding; however, such payments must be identified either by making a separate payment or by specifically indicating the separate amount where both wages and reimbursement of expenses are made in a single payment. If an employee receives a definite weekly, monthly, or annual salary, withholding is required upon the entire amount even though the amount may be fixed by including an estimate of expenses which will necessarily be incurred by the employee on behalf of the employer. Only reimbursement based upon actual expenses is exempted from withholding. Sickness disability benefits and other disability pensions paid by an employer to an employee are emoluments unless they fall within exemptions of sections 104 to 106 of the IRC.

(4) Where an employer-employee relationship exists between spouses in a marriage, the employing spouse must withhold. Sums received by unemancipated minors which are not gifts, but compensation for bona fide personal services rendered to parents, require withholding.

(5) Withholding is required from distributions from a deferred compensation plan as defined in IRC 457 or a nonqualified plan under IRC 403 if the contributions to the plan or payments from the plan are wages.

(6) Wages due but not yet paid at the date an employee dies are not considered wages and are not subject to withholding.

(7) Withholding is required from accrued vacation pay, even though disbursed after termination of employment.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.162

Hist.: 1-69; 11-71; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 4-1991, f. 12-30-91, cert. ef. 12-31-91; RD 7-1992, f. & cert. ef. 12-29-92; RD 5-1993, f. 12-30-93, cert. ef. 12-31-93; REV 6-1998, f. 11-13-98, cert. ef. 12-31-98; Renumbered from 150-316.162(2)-(A), REV 61-2016, f. 8-15-16, cert. ef. 9-1-16; REV 3-2017, f. 5-31-17, cert. ef. 6-1-17

150-316-0470

Allocation of Joint Estimated Tax Payments

(1) Spouses in a marriage may make joint estimated tax payments for any part of the tax year although they may elect to file separate tax returns. If separate returns are filed the joint estimated tax payments may be treated as the estimated tax of either the husband or wife or may be divided between the spouses in such manner as they agree.

(2) If the spouses do not agree on how to divide their joint estimated tax payments, the payments shall be allocated between them by the department. Spouses will be considered not to have agreed on a method for dividing their joint estimated payments when both spouses file separate returns claiming credit for estimated tax payments which when combined do not

equal the amount of joint estimated tax payments received by the department during the tax year.

(3) The department shall divide the joint estimated tax payments by allocating to each spouse an amount of the payments in the proportion that the spouses' separate tax liability computed after credits, other than the credits for withholding and estimated tax payments, bears to the combined separate tax liabilities of both spouses.

The formula to be used is:

Separate tax liability

— (divided by) —

(Combined separate tax liabilities x joint estimated tax payments)

During 20XX, Adam and Betty make joint estimated tax payments of \$2,000. Betty also has tax withholding of \$1,000. Adam and Betty decide to file separate returns for 20XX but fail to agree on how to divide their 20XX joint estimated tax payments. Adam has a separate tax liability after credits of \$1,500. Betty has a separate tax liability of \$1,100 before credit for withholding of \$1,000. Using the formula stated above, Adam's share of the estimated tax payments is \$1,154 ($\$1,500 \div \$2,600 \times \$2,000$). Betty's share of the estimated tax payments is \$846 ($\$1,100 \div \$2,600 \times \$2,000$). Adam will owe a net amount of \$346 ($\$1,154 - \$1,500$) and Betty will receive a refund of \$746 ($\$846 + \$1,000 - \$1,100$).

(4) If spouses in a marriage make joint estimated tax payments and the department issues a notice of assessment against either or both of the spouses under the provisions of ORS 305.265(10), the department shall allocate the estimated tax payments between the spouses. The allocation of payments shall be made using the best information available to the department.

(5) In the event one of the spouses received credit for more than their allocable share of the joint estimated tax payments as determined by the department, the difference between their allocable share and the amount for which credit was received when the return was processed, shall be remitted to the department. This amount shall be remitted with the filing of an amended return or through payment of a notice of deficiency issued by the department.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.567

Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 6-1996, f. 12-23-96, cert. ef. 12-31-96; Renumbered from 150-316.567, REV 65-2016, f. 8-15-16, cert. ef. 9-1-16; REV 3-2017, f. 5-31-17, cert. ef. 6-1-17

Rule Caption: Property Tax: Updating Language relating to spouses in a marriage; correcting section references.

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Rules Amended: 150-308-0760, 150-308-1140, 150-321-0340, 150-321-0810

Subject: 150-308-0760 - Manufactured Structure Classified as Real or Personal Property. Replacing outdated language relating to spouses in a marriage.

150-308-1140 - Qualified Specially Assessed Homesite Valuation. Replacing outdated language relating to spouses in a marriage.

150-321-0340 - Minimum Stocking and Acreage Requirements for Designation as Forestland in Western Oregon. Correcting section references.

150-321-0810 - Minimum Stocking and Acreage Requirements for Designation as Forestland in Eastern Oregon. Correcting section references.

Rules Coordinator: Lois Williams—(503) 945-8029

150-308-0760

Manufactured Structure Classified as Real or Personal Property

(1) When the records in the assessor's office or the ownership document issued by Building Codes Division of the Department of Consumer and Business Services (DCBS) do not identify the same ownership for a manufactured structure as for the land upon which the structure is located, the assessor must classify the manufactured structure as personal property. However, if the taxpayer submits documentation establishing that the ownership of the manufactured structure and land upon which the structure is located is the same, the assessor must classify the manufactured structure as real property.

Example 1: The land is in the name of Pat Public, Inc., a corporation, and the manufactured structure is in the name of Pat Public. Because a corporation is a different legal entity than an individual, the ownership is not the same, so the manufactured structure must be classified as personal property.

Example 2: Spouses in a marriage are owners of a parcel of land upon which a manufactured structure is located. The ownership document for the manufactured structure is in one spouse's name only. The ownership is not the same and the manufactured structure must be classified as personal property.

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Example 3: Pat Public owns a manufactured structure and is buying on contract the parcel of land upon which the structure is located. For purposes of ORS 308.875 the ownership is the same and the manufactured structure must be classified as real property.

(2) When the owner of a manufactured structure has a leasehold estate of 20 years or more, and the lease specifically permits the owner to record that lease in the county deed records, the owner may complete an application as prescribed by DCBS to have the home classified as real property. If the assessor determines that the manufactured structure qualifies for recording as required by ORS 446.626, and the lease has subsequently been recorded in the county deed records, the assessor must then classify the home as real property.

(3) When the owner of a manufactured structure is a member of a manufactured dwelling park nonprofit cooperative formed under ORS 62.800 to 62.815 that owns the land on which the manufactured structure is located, the owner may complete an application as prescribed by DCBS to have the home classified as real property. If the assessor determines that the manufactured structure qualifies for recording as required by ORS 446.626, the assessor must then classify the home as real property.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.875

Hist.: RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; RD 5-1996, f. 12-23-96, cert. ef. 12-31-96; REV 9-2006, f. 12-27-06, cert. ef. 1-1-07; REV 11-2009, f. 12-21-09, cert. ef. 1-1-10; Renumbered from 150-308.875(A), REV 59-2016, f. 8-13-16, cert. ef. 9-1-16; REV 4-2017, f. 5-31-17, cert. ef. 6-1-17

150-308-1140

Qualified Specially Assessed Homesite Valuation

(1) Definitions:

(a) "Parcel" is a quantity of land that is capable of being described in a single description by a closed traverse, or as one of a number of subsections or sections in a township(s), or as lots, blocks, or tracts in a subdivision. A "parcel" may consist of one or more tax lots.

(b) "Contiguous" means having a common boundary to some extent greater than a point. Parcels are contiguous if separated by public or county roads, state highways, or non-navigable streams or rivers. Parcels are not contiguous if they are separated by interstate freeways, or navigable streams or rivers, except where there is direct connecting access, such as an underpass, for property separated by an interstate freeway.

(c) "Site Developments" has the same meaning as in OAR 150-307-0010.

(d) "Land Improvements" is synonymous with "site developments."

(e) "Same Ownership" — to be considered the "same ownership," separate land accounts (tax lots) must have a common name in the property title. For example, a parcel owned by one person in his or her name is under the same ownership as a parcel owned jointly by spouses in a marriage. Properties do not have the "same ownership" if one parcel is owned by spouses in a marriage and the other parcel is owned by a corporation even though the corporation is owned by the spouses.

(f) "MSAV" means maximum assessed value for property subject to special assessment (maximum specially assessed value).

(2) Land comprising homesites for dwellings being used in conjunction with farm use in EFU zones, qualifying homesites outside the EFU zones, and qualified forest homesites must be valued at the special value provided by ORS 308A.256. Land comprising a non-qualifying homesite must be assessed at its real market value as defined in 308.205 pursuant to 308A.259.

(3) The method for determining the value for a qualified homesite is the same whether the homesite is located within an exclusive farm use (EFU) zone, an area not zoned for exclusive farm use (non-EFU), or for forest homesites as defined in ORS 308A.253(1).

(a) The first step in valuing a qualified homesite is to determine the total number of acres of the "parcel" and contiguous acres under the same ownership.

(b) The second step is to determine the bare land average per acre real market value (RMV) of the parcel. To do this:

(A) First, determine the total bare land RMV (including riverfront, view, etc.) for the parcel and contiguous acres under the same ownership on which the homesite is located.

(B) Second, divide the total bare land RMV of the parcel and contiguous acres under the same ownership by the total number of acres in the parcel and contiguous acres under the same ownership.

(C) The result is the average RMV for one acre of the parcel and contiguous acres under the same ownership.

(c) The third step is to determine the specially assessed value (SAV) of the "land improvements." The SAV of land improvements are to be valued at \$4,000, or the depreciated replacement cost of the items that make up the land improvements, whichever is less.

(d) The average RMV of one acre of the land plus the land improvement SAV equals the total "homesite" SAV. However, the land improvement value must be carried as a separate item on the land record as specified in OAR 150-307-0010.

(4) Calculation of homesite MSAV.

(a) For the 1997–98 tax year, the MSAV on homesites qualified for the 1995–96 tax year and before equals the homesite's SAV for the 1995–96 tax year reduced by 10 percent.

(b) For the 1997–98 and subsequent tax years, the MSAV of any newly qualified homesite equals the product of the residential rural property class 4-X-X changed property ratio multiplied by the farm or forest homesite SAV. The MSAV for a homesite first qualified for the 1996–97 tax year is calculated under this subsection for the 1997–98 tax year.

(c) Once the MSAV of a homesite has been established by subsection (a) or (b) above, the MSAV increases 3% each year thereafter.

(5) The assessed value of a qualified farm or forest homesite equals the lesser of the homesite's SAV or the homesite's MSAV.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.377 & 308A.256

Hist.: RD 8-1988, f. 12-19-88, cert. ef. 12-31-88; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1997, f. & cert. ef. 12-31-97; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00, Renumbered from 150-308.377; Renumbered from 150-308A.256, REV 25-2016, f. 8-12-16, cert. ef. 9-1-16; REV 4-2017, f. 5-31-17, cert. ef. 6-1-17

150-321-0340

Minimum Stocking and Acreage Requirements for Designation as Forestland in Western Oregon

(1) "Contiguous acres" means acres touching along a boundary or at a point.

(a) Includes acres separated by a public or county road, state highway or any stream other than a large stream as identified by the state forester using the water classification system in OAR 629-635-0200.

(b) Does not include acres separated by an interstate highway or large stream.

(2) To qualify, the land must have growing upon it at least the number of established trees per acre set by the state forester in OAR 629-610-0020. The established trees must be of a marketable species acceptable to the state forester as described or set forth in OAR 629-610-0050.

(3) If the land does not meet the minimum requirements of section (2) of this rule, the owner must give the assessor a written management plan for establishing trees to meet the minimum stocking requirements. The plan must contain and meet the following requirements:

(a) A description of the area that states the location, number of acres, ground cover, present stocking, steepness of slope, and aspect (the direction the slope faces).

(b) A list of needed site preparation requirements prior to planting. Examples include brush or grass removal, rodent eradication, disease and insect problem resolution, slash disposal, protection from grazing or browsing animals, and tillage of soil.

(c) Planting information that lists the species to be planted, time of year that planting will take place, number of trees per acre to be planted, and method of planting.

(d) At least 20 percent, but not less than two acres, of the area in the plan must be planted by December 31 of the first assessment year that the land is designated as forestland. Each additional year thereafter, a minimum of 20 percent of the area must be planted. At the end of the fifth year after the assessor approves the designation, 100 percent of the area in the plan must be planted. The assessor may grant extensions to fulfilling planting requirements if a loss of planted stock occurs due to conditions beyond the control of the landowner.

(4) To qualify, the area to be designated must be at least two contiguous acres in common ownership. All other property located within the same county that is owned by the same common owner of at least two contiguous acres may also qualify for forestland designation if it meets the stocking requirements.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 321.358

Hist.: 12-6-82, 12-31-82; RD 3-1996, f. 12-23-96, cert. ef. 12-31-96; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00; Renumbered from 150-321.358(2), REV 12-2004, f. 12-29-04, cert. ef. 12-31-04; Renumbered from 150-321.358(4), REV 70-2016, f. 8-15-16, cert. ef. 9-1-16; REV 80-2016, f. 12-28-16, cert. ef. 1-1-17; REV 4-2017, f. 5-31-17, cert. ef. 6-1-17

150-321-0810

Minimum Stocking and Acreage Requirements for Designation as Forestland in Eastern Oregon

(1) "Contiguous acres" means acres touching along a boundary or at a point.

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(a) Includes acres separated by a public or county road, state highway or any stream other than a large stream as identified by the state forester using the water classification system in OAR 629-635-0200.

(b) Does not include acres separated by an interstate highway or large stream.

(2) To qualify, the land must have growing upon it at least the number of established trees per acre set by the state forester in OAR 629-610-0020. The established trees must be of a marketable species acceptable to the state forester as described or set forth in OAR 629-610-0050.

(3) If the land does not meet the minimum requirements of section (2) of this rule, the owner must give the assessor a written management plan for establishing trees to meet the minimum stocking requirements. The plan must contain and meet the following requirements:

(a) A description of the area that states the location, number of acres, ground cover, present stocking, steepness of slope, and aspect (the direction the slope faces).

(b) A list of needed site preparation requirements prior to planting. Examples include brush or grass removal, rodent eradication, disease and insect problem resolution, slash disposal, protection from grazing or browsing animals, and tillage of soil.

(c) Planting information that lists the species to be planted, time of year that planting will take place, number of trees per acre to be planted, and method of planting.

(d) At least 20 percent, but not less than two acres, of the area in the plan must be planted by December 31 of the first assessment year that the land is designated as forestland. Each additional year thereafter, a minimum of 20 percent of the area must be planted. At the end of the fifth year after the assessor approves the designation, 100 percent of the area in the plan must be planted. The assessor may grant extensions to planting requirements if a loss of planted stock occurs due to conditions beyond the control of the landowner.

(4) Certain lands do not support sufficient stocking requirements; however, when the use of these lands supports sound management practices and the harvest of forest crops on surrounding lands, these lands may be designated as forestland. Examples of such lands include:

(a) Roads, landings, and rock pits used for forest roads that are necessary for forest management and the harvest of forest crops.

(b) Land that is subject to power transmission and distribution easements or gas line easements that are not centrally assessed under ORS 308.505-308.665 or 308.805-308.820 if the lands would otherwise qualify for designation as forestland if, but for the easement, sufficient stocking of trees would be permitted.

(5) To qualify for designation, the land must meet the minimum stocking requirements of sections (2) or (3) of this rule. However, when the circumstances listed in section (4) of this rule are present, and at least 80 percent of the total area applied for meets the minimum stocking requirements, the total area of the application will be assessed as designated forestland.

(6) To qualify, the area to be designated must be at least two contiguous acres in common ownership. All other property located within the same county that is owned by the same common owner of at least two contiguous acres may also qualify for forestland designation if it meets the stocking requirements.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 321.805

Hist.: 11-71; TC 10-1978, f. 12-5-78, cert. ef. 12-31-78; RD 15-1982, f. 12-6-82, cert. ef. 12-31-82; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 3-1996, f. 12-23-96, cert. ef. 12-31-96; REV 11-2000, f. 12-29-00, cert. ef. 12-31-00; Renumbered from 150-321.805, REV 12-2004, f. 12-29-04, cert. ef. 12-31-04; Renumbered from 150-321.839(4), REV 71-2016, f. 8-15-16, cert. ef. 9-1-16; REV 80-2016, f. 12-28-16, cert. ef. 1-1-17; REV 4-2017, f. 5-31-17, cert. ef. 6-1-17

Rule Caption: Personal Income Tax Credits: Substantiation Required, Repealing outdated state surplus (kicker) example, and obsolete rules.

Adm. Order No.: REV 5-2017

Filed with Sec. of State: 5-31-2017

Certified to be Effective: 6-1-17

Notice Publication Date: 4-1-2017

Rules Amended: 150-316-0615, 150-316-0493

Rules Repealed: 150-314-0020, 150-315-0130, 150-315-0132, 150-316-0105, 150-316-0107, 150-316-0220, 150-316-0620, 150-316-0645

Subject: 150-316-0615 - Substantiation Required. Combining identical substantiation requirements pertaining to ORS 316.818 and 316.832 into one rule for clarity.

150-316-0493 - Required Installments for Estimated Tax. To remove an obsolete provision and example that references surplus refund payments (also known as kicker checks).

150-314-0020 - Refund; Method of Claiming. ORS 314.220 was repealed in 2005. The accompanying rule is no longer necessary since the statute has been repealed.

150-315-0130 - Computation of Oregon Credit for Qualified Adoption Expenses. ORS 315.274 was repealed in 2011. The accompanying rule is no longer necessary since the statute and credit have been repealed.

150-315-0132 - Oregon Adoption Credit Prorated For Part-Year and Nonresidents. ORS 315.274 was repealed in 2011. The accompanying rule is no longer necessary since the statute and credit have been repealed.

150-316-0105 - Sewer Connection Credit. ORS 316.095 was repealed in 2011. The accompanying rule is no longer necessary since the statute and credit have been repealed.

150-316-0107 - Sewer Connection Credit: Substantiation for Bancroft Bonding. The accompanying rule is no longer necessary since the statute and credit have been repealed.

150-316-0220 - Credit of Involuntary Move of a Mobile Home. ORS 316.153 was repealed in 2007. The accompanying rule is no longer necessary since the statute and credit have been repealed.

150-316-0620 - Substantiation Required. Combining identical substantiation requirements pertaining to ORS 316.818 and 316.832 into one rule for clarity.

150-316-0645 - Individual Pension and Retirement Plans. ORS 316.836 was repealed in 1997. The accompanying rule is no longer necessary since the statute has been repealed.

Rules Coordinator: Lois Williams—(503) 945-8029

150-316-0615

Substantiation Required for Construction Worker and Loggers Expenses

Upon audit, the taxpayer may be required to provide the same substantiation that would be necessary for a travel expense deduction allowable under IRC 162(a).

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 316.818, 316.832

Hist.: 11-6-78(Temp); 12-31-78, Renumbered from 150-316.059; 12-31-83; Renumbered from 150-316.818, REV 66-2016, f. 8-15-16, cert. ef. 9-1-16; REV 5-2017, f. 5-31-17, cert. ef. 6-1-17

150-316-0493

Required Installments for Estimated Tax

(1) Definitions.

(a) "Required annual payment" means the total amount of required installment payments for the tax year.

(b) "Required installment payment" means the amount of the payment that is due for each of the four payment periods during the tax year.

(2) There are two steps to determine estimated tax payments. The first step is to determine the required annual payment, and the second step is to determine the amount of the required installment payments.

(3) Determination of required annual payment amount.

(a) The required annual payment is the lesser of:

(A) Ninety percent of the tax shown on the return for the taxable year (or, if no return is filed, ninety percent of the tax for such year); or

(B) One hundred percent of the tax shown on the prior year's return, if qualified. This is sometimes referred to as 'safe harbor.' To use the prior year's tax to determine the required annual payment, the prior year's return must be filed before the current year's return, and the prior tax year must consist of 12 months.

Example 1: Amanda's adjusted gross income on her 2012 return was \$30,000 and her Oregon tax liability after credits was \$2,000. Amanda's 2013 Oregon tax liability after credits is \$2,800. Ninety percent of the 2013 tax after credits is \$2,520. She can use the prior year tax and pay 2013 estimated tax payments equal to 100 percent of her 2012 tax liability (\$500 on each installment due date).

(b) A part-year resident may use the prior year tax unless disqualified for a reason described in this section.

Example 2: Michael moved to Oregon from California on July 1, 2012 and filed as a part-year resident. His 2012 Oregon tax after credits was \$1,500. Even though his 2012 return shows 6 months of Oregon residency, his taxable year for 2012 was 12 full months. He qualifies to use safe harbor (prior year tax) to determine his required

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annual payment for 2013. This is less than 90 percent of his 2013 tax, so he will use that to determine his required annual payment. His required installment payments in 2013 are \$375 for each period (25% of \$1,500) for regular installment payments, or the applicable percentage if using the annualized income installment payments, in order to avoid interest on underpayment of estimated tax for 2013.

(c) Use the amounts from the original return to determine the payments unless an amended return was filed before the due date, including extensions. In that case, use the amounts from the amended return to determine the required annual payment. Amended returns filed after the due date of the original return, including extensions, cannot be used to determine the required annual payment.

Example 3: Aliyah's original tax return showed a tax liability after all credits of \$1,400. Aliyah did not file an extension. In July, the return was amended and the tax liability after credits was \$1,200. Aliyah bases her required annual payment on the \$1,400 tax shown on the original return.

Example 4: Shaylee's original tax return was filed June 29, 2012 with an approved extension to October 15, 2012 showing a tax liability of \$1,975. On October 9, 2012 the return was amended and the tax liability was reduced to \$1,245. In 2013, if Shaylee chooses to use the prior year's tax, the required annual payment is based on the \$1,245 tax shown on the amended return filed within the extension period.

(d) Estimated tax payments are not required if the amount of the required annual payment minus Oregon tax withheld is less than \$1,000. For information about additional exceptions, see ORS 316.563 through 316.588, and OAR 150-316-0475 through 150-316-0491.

Example 5: Brandon and Michelle are married and have three children. Brandon is self-employed. Michelle works part-time. They want to know if they are required to make estimated tax payments. Their estimated 2013 adjusted gross income is \$75,000, their estimated net itemized deductions are \$13,500 and they expect to have \$630 withheld from Michelle's wages. [Table not included. See ED. NOTE.]

(4) Determination of the required installment payment amount.

(a) The required installment payment for each of the four tax periods is the lesser of the payment due under one of the following two methods for determining the amount of an installment payment:

(A) Regular Installment: The required installment payment for each period is 25 percent of the required annual payment.

(B) Annualized Income Installment: The required annualized income installment payment is the "applicable percentage" of the required annual payment for the taxable year minus the amount of any required installments paid for prior periods during the tax year. The applicable percentages are:

- (i) 22.5% for the first period;
- (ii) 45% for the first and second periods;
- (iii) 67.5% for the first, second and third periods; and
- (iv) 90 % for the first through fourth periods.

(b) If the taxpayer shows that the annualized income installment for a period (as determined from the annualized income worksheet) is less than the regular installment for that period, the amount of the required installment payment for that period is the annualized income installment.

(c) If the annualized income installment method is used to determine a required installment payment, the difference between that amount and the amount that would have been due if the regular installment method had been used must be added to the required installment payment for the next succeeding period.

(d) Generally, credits based on income or deductions are figured on the annualized income or deductions for each period.

(e) Credits computed as a percentage of income must be based upon the annualized income for the period.

(f) Credits that use income as a basis for determining an applicable percentage or for otherwise limiting the allowable credit must be based upon the total annualized income before allocation to the installment period.

Example 6: Richard and Terrie are married with no dependents. They had adjusted gross income of \$14,000 for the period of January 1, 2013 to March 31, 2013. For the same period, they had itemized deductions of \$2,810. For the period of January 1, 2013 to May 31, 2013, they had adjusted gross income of \$27,000 and itemized deductions of \$4,300. For the period of January 1, 2013 to August 31, 2013, they had adjusted gross income of \$41,000 and itemized deductions of \$6,300. For the period January 1, 2013 to December 31, 2013, they had adjusted gross income of \$69,000 and itemized deductions of \$14,100. Their 2012 return showed tax after credits of \$3,155. For purposes of computing the required installment, the following computations are necessary: Actual income from January 1 to March 31 x 4. Actual income from January 1 to May 31 x 2.4. Actual income from January 1 to August 31 x 1.5. Actual income from January 1 to December 31 x 1.0. First Estimated Tax Payment. [Table not included. See ED. NOTE.]

(g) Pass-through entity (PTE) income may be annualized following the methodology provided under Internal Revenue Code (IRC) section 6654, Treasury Regulation section 1.6654-2 and all other related regulations and rules, if annualizing more accurately reflects the fluctuations in income to the shareholder from the entity. Solely for purposes of annualizing, the shareholder or partner may recognize the distributable share of income or loss from the PTE for the months in the PTE's taxable year ending within the taxable year of the shareholder or partner that precede the month in which the estimated tax installment is due.

Example 7: Ed's Catering, Inc. (ECI) is a calendar year S corporation that is in the catering business. ECI has limited business outside of the busy holiday party season. The majority of its business occurs in October, November, and December. In 2013, ECI's income was \$30,000 from January 1–March 31; \$25,000 from April 1–June 30; \$20,000 from July 1–September 30; and \$450,000 October 1 to December 31. An ECI shareholder who receives most of his or her income during the last quarter in ECI's tax year may choose to use the annualized income installment method for purposes of determining estimated tax payments.

Example 8: Wedding Planner's, Inc. (WPI), an S corporation, has a fiscal year ending July 31st. The majority of its business occurs in May, June, and July. In fiscal year beginning 2012, WPI's income was \$30,000 from August 1, 2012–October 31, 2012; \$25,000 from November 1, 2012–January 31, 2013; \$20,000 from February 1, 2013–April 30, 2013; and \$450,000 May 1, 2013 to July 31, 2013. The shareholder must include the income attributable to WPI as follows when determining the required installment for the shareholder's calendar year 2013 using the annual method:

The 1st required installment is based on PTE income/loss from August 1st of the prior year to March 31st. Date payment is due is April 15th. The 2nd required installment is based on PTE income/loss from August 1st of the prior year to May 31st. Date payment is due is June 15th. The 3rd required installment is based on PTE income/loss from August 1st of the prior year to July 31st. Date payment is due is September 15th. The 4th required installment would already include the entire amount from the PTE received in the tax year of the shareholder but should not increase the underpayment for the 4th quarter since it was fully included by the third payment.

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

Stat. Auth.: ORS 305.100, 316.587

Stats. Implemented: ORS 316.587

Hist.: RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 5-1994, f. 12-15-94, cert. ef. 12-31-94; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; REV 8-2001, f. & cert. ef. 12-31-01; REV 3-2006, f. & cert. ef. 7-31-06; REV 6-2008, f. 8-29-08, cert. ef. 8-31-08; REV 16-2010, f. 12-17-10, cert. ef. 1-1-11; REV 1-2014, f. & cert. ef. 7-31-14; Renumbered from 150-316.587(8)-(A), REV 65-2016, f. 8-15-16, cert. ef. 9-1-16; REV 5-2017, f. 5-31-17, cert. ef. 6-1-17

Rule Caption: Re-publishing full version of rule (no changes) through Archives' database, including tables within the examples.

Adm. Order No.: REV 6-2017

Filed with Sec. of State: 6-8-2017

Certified to be Effective: 6-8-17

Notice Publication Date:

Rules Amended: 150-305-0304

Subject: 150-305-0304: Certificate of Compliance With Oregon Tax Laws: This rule was last adopted 08/13/2016 (effective 09/01/2016). Department of Revenue is filing this notice to have the full version of the rule, including tables previously available from the agency, re-published by the Secretary of State. There are no changes to the rule content itself at this time.

Rules Coordinator: Shannon Ball—(503) 945-7938

150-305-0304

Certificate of Compliance With Oregon Tax Laws

(1) Each certificate of compliance with Oregon tax laws and local taxes administered by the department shall contain the following elements:

(a) For individuals, including sole proprietors, a statement certifying under penalty of perjury that the individual is, to the best of the individual's knowledge, in compliance with Oregon tax laws.

(b) For corporations, partnerships, estates and trusts, a statement by an authorized individual certifying under penalty of perjury that the vendor is, to the best of the representative's knowledge, in compliance with Oregon tax laws.

(c) A list of the Oregon tax laws referred to in ORS 305.380(4).

(2) Notarization by a notary public is not required.

(3) An example of an acceptable format for the certificate is: [Form not included. See ED. NOTE.]

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 305.385

Hist.: RD 1-1990, f. & cert. ef. 3-15-90; RD 6-1996, f. 12-23-96, cert. ef. 12-31-96; REV 7-1999, f. 12-1-99, cert. ef. 12-31-99; Renumbered from 150-305.385(6)-(B), REV 49-2016, f. 8-13-16, cert. ef. 9-1-16; REV 6-2017, f. & cert. ef. 6-8-17

Rule Caption: Re-publishing full version of rule (no changes) through Archives' database, including tables within the examples.

Adm. Order No.: REV 7-2017

Filed with Sec. of State: 6-8-2017

Certified to be Effective: 6-8-17

Notice Publication Date:

Rules Amended: 150-198-0900

Subject: OAR 150-198-0900 Assets of Dissolved Districts: This rule was last adopted 08/10/2016 (effective 09/01/2016). Department of

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Revenue is filing this notice to have the full version of the rule, including tables previously available from the agency, re-published by the Secretary of State. There are no changes to the rule content itself at this time.

Rules Coordinator: Shannon Ball—(503) 945-7938

150-198-0900

Assets of Dissolved Districts

Surplus funds of the dissolved district shall be treated as an offset. The offsets shall be apportioned between the districts who share territory with the dissolved district in the following manner.

(1) The assessor shall use the value used to compute taxes for the current year to do this calculation. Only the value in code areas which both districts share shall be used in this calculation.

(2) The assessor shall list individually the value of each district within the shared territory of the dissolved district.

(3) The assessor shall establish a multiplier for each district in the following manner. Divide the shared value of each district within the dissolved district's territory by the total shared value of all of the districts established in (2). The sum of the multipliers of the districts for this step shall equal 1.00.

(4) The assessor shall multiply the total offset available for apportionment by the individual district multiplier. This will yield the offset for each district. The total offsets for all districts must equal the total available for offset.

(5) The assessor shall divide the apportioned offset for the district by the shared value used to compute taxes for the district in order to determine the offset rate for each of those districts whose total territory lies within the boundaries of the dissolved district.

(6) The assessor shall subtract the offset rate from the district general operating tax rate in the same manner as all other offsets rates. For those taxing districts that have territory both within and outside of the boundaries of the dissolved district, the tax rate shall be adjusted for the offset only in code areas that are shared with the dissolved district. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 198.955

Hist.: RD 9-1990, f. 12-20-90, cert. ef. 12-31-90; REV 13-1999, f. 12-30-99, cert. ef. 12-31-99; Renumbered from 150-198.955(3)(a), REV 14-2016, f. 8-10-16, cert. ef. 9-1-16; REV 7-2017, f. & cert. ef. 6-8-17

Rule Caption: Re-publishing full version of rule (no changes) through Archives' database, including tables within the examples.

Adm. Order No.: REV 8-2017

Filed with Sec. of State: 6-8-2017

Certified to be Effective: 6-8-17

Notice Publication Date:

Rules Amended: 150-280-0010

Subject: 150-280-0010: Calculating the Estimated Dollar Weighted Life for Local Option Taxes. This rule was last adopted 08/10/2016 (effective 09/01/2016). Department of Revenue is filing this notice to have the full version of the rule, including tables previously available from the agency, re-published by the Secretary of State. There are no changes to the rule content itself at this time.

Rules Coordinator: Shannon Ball—(503) 945-7938

150-280-0010

Calculating the Estimated Dollar Weighted Life for Local Option Taxes

(1) For local option taxes used to fund capital projects, the estimated dollar weighted life of capital projects shall be calculated in the following manner.

(a) The useful life of the project shall be estimated in years.

(b) The cost of the project shall be estimated in dollars and cents.

(c) The estimated useful life of the project shall be multiplied by the estimated cost of the project. This is the weight of the project.

(d) The weight of the project is divided by the cost of the project to come up with the estimated dollar average life of the project. This is the maximum time that may be financed using a local option tax.

(2) For a local option tax that only funds one capital project, the estimated dollar weighted life of the project will equal the useful life of the project.

(3) For a local option tax that supports more than one capital project, complete (1)(a) through (1)(c) above for each capital project. Sum the cost

of all of the projects and sum the weight of all the projects in the local option tax. Then divide the total weight by the total cost to arrive at the estimated dollar average life of the capital project for this tax.

Example: A city decides to go out for a local option for their police department. The local option tax is going to be used to purchase 2 new computers, 2 patrol cars and rewire the station house. What is the estimated dollar average life of the capital projects financed by this local option levy? [Table not included. See ED. NOTE.]

(4) Normal rounding is used in calculating the estimated dollar average life.

(5) Local option tax for capital projects cannot exceed 10 years.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 280.060

Hist.: REV 3-1998, f. & cert. ef. 6-30-98; Renumbered from 150-280.060(A), REV 19-2016, f. 8-10-16, cert. ef. 9-1-16; REV 8-2017, f. & cert. ef. 6-8-17

Rule Caption: Re-publishing full version of rule (no changes) through Archives' database, including tables within the examples.

Adm. Order No.: REV 9-2017

Filed with Sec. of State: 6-15-2017

Certified to be Effective: 6-15-17

Notice Publication Date:

Rules Amended: 150-308-0250

Subject: OAR 150-308-0250 Derivation of Capital Structure and Discount Rates for Valuing Industrial Properties and Department-Assessed Properties: This rule was last adopted 08/13/2016 (effective 09/01/2016). Department of Revenue is filing this notice to have the full version of the rule, including tables previously available from the agency, re-published by the Secretary of State. There are no changes to the rule content itself at this time.

Rules Coordinator: Shannon Ball—(503) 945-7938

150-308-0250

Derivation of Capital Structure and Discount Rates for Valuing Industrial Properties and Department-Assessed Properties

(1) CAPITAL STRUCTURE.

The capital structure of a company refers to the make-up of its financial structure, i.e., long-term debt and equity. For ad valorem appraisal purposes, the appropriate capital structure for a company is the typical capital structure for the industry group to which the property belongs based upon current market cost of debt and equity. If it can be shown that use of an industry capital structure would not reflect the market value of the property because of the unique nature of the property or its operation, the current owner's capital structure may be used. The procedures to be followed in determining capital structure are as follows:

(a) Select industry group, i.e., electric utility, airline, railroad, lumber, food processing, etc.

(b) Determine if it is necessary to have industry sub groups. Sub groups are groupings of properties within an industry type that have similar characteristics and that are different from other sub groups within the industry type. Sub groups have similar qualities such as bond ratings, degree of risk if unrated, business activities and size.

(c) For each group or sub group, a sufficient number of companies should be selected that have publicly traded securities and similar debt ratings (e.g., Moody's Aa, A, Baa, etc.). The company or companies whose property is subject to appraisal may be included as part of the data set.

(d) The appropriate capital structures shall be determined by a correlation of the capital structures of the companies in the selected group.

(e) Capital structures for companies with nonrated debt must be estimated from the best data available, such as balance sheets, public utility commission-approved structures, sales data, lenders' opinions, industry recommendations, or patterns established by companies with rated debt within the same industry.

(2) BASIC DISCOUNT RATE. Basic discount rate, cost of capital, and capitalization rate are synonymous as used herein. The band-of-investment method is the preferred method for calculating basic discount rate. An example of this method, assuming a capital structure of 50 percent debt, 10 percent preferred stock, and 40 percent common equity, is shown below: [Table not included. See ED. NOTE.]

(a) The band-of-investment capitalization rate can readily be converted to an after-tax rate. The after-tax interest rate is substituted for the current cost of debt in the band-of-investment procedure. This after-tax cost of debt is calculated by multiplying the current cost of debt by one minus the corporate tax rate. When the after-tax cost of capital is used, the tax expense of the prospective purchaser must be deducted from the income to be cap-

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itized as though the property had no tax shelter from debt interest to avoid double counting the deduction for income taxes.

(b) Cost of Debt. The cost of debt is the current market rate for new securities. The embedded rate on securities previously issued is not a proper measure. In order to determine the cost of debt the appraiser should:

(A) Refer to the rates for seasoned bond issues from Moody's Utility, Industrial, and Transportation weekly news reports or other rating services for at least two months immediately prior to the appraisal date. This should be done by bond rating (Aa, A, Baa, etc.) and industry type.

(B) Obtain information on new bond issues by industry type and bond rating from Moody's Bond Survey or other publications for at least two months immediately prior to the appraisal date.

(C) Consider recommendations on debt rates submitted by industry.

(D) Select rates for each industry group by bond rating after analyzing the data in the steps above.

(c) Preferred Stock. The cost of preferred stock is determined from the current market rates, not the embedded rate.

(d) Cost of Equity. The two preferred methods for determining the cost of equity capital are the Discounted Cash Flow (DCF) model and Capital Asset Pricing Model (CAPM). The appraiser should consider other models if circumstances and data justify their use. [Table not included. See ED. NOTE.] Information on the risk free rate (Rf) can be obtained from the Federal Reserve Bulletin containing rates for U.S. Treasury notes or bonds as near the appraisal date as possible. Data for Beta (Bi) and the market rate (Rm) shall be obtained from a reliable source such as Value Line. A single number for risk premium (Rp) such as those published by Ibbotson Associates, Kidder Peabody, and others may be used. The CAPM equity rate for the industry group is determined by correlating equity rates of return computed for the companies in the industry capital structure group.

(3) EFFECTIVE DATE: This rule first applies to property valuations as of January 1, 1990.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.205

Hist.: RD 2-1990, f. & cert. ef. 3-15-90; Renumbered from 150-308.205-(C), REV 57-2016, f. 8-13-16, cert. ef. 9-1-16; REV 9-2017, f. & cert. ef. 6-15-17

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Adm. Order No.: REV 10-2017

Filed with Sec. of State: 6-15-2017

Certified to be Effective: 6-15-17

Notice Publication Date:

Rules Amended: 150-308-0280

Subject: 150-308-0280 Measuring Functional Obsolescence in Industrial Property: This rule was last adopted 08/13/2016 (effective 09/01/2016). Department of Revenue is filing this notice to have the full version of the rule, including tables previously available from the agency, re-published by the Secretary of State. There are no changes to the rule content itself at this time.

Rules Coordinator: Shannon Ball—(503) 945-7938

150-308-0280

Measuring Functional Obsolescence in Industrial Property

(1) The procedure for estimating functional obsolescence for industrial property in the reproduction cost approach is as follows:

(a) The total functional obsolescence equals:

(A) The physically depreciated reproduction cost of the property with a deficiency requiring a substitution or modernization, or a superadequacy, less

(B) The physically depreciated cost of the replacement property with a deficiency requiring a substitution or modernization, or a superadequacy, plus

(C) The cost to cure or the value of the loss (if less).

(b) For an industrial property with a deficiency requiring an addition follow the same steps as listed in subsection (1)(a), except step (A) equals zero.

(c) The result of (1)(a) equals the total functional obsolescence deduction in the reproduction cost approach attributable to the property with a deficiency or superadequacy.

(d) In specific situations, the procedure in subsection (1) can be simplified:

(A) For curable functional obsolescence caused by a deficiency requiring a substitution or modernization, or a superadequacy, functional

obsolescence equals the physically depreciated reproduction cost of the property with a deficiency or superadequacy plus the excess cost to cure.

(B) For curable functional obsolescence caused by a deficiency requiring an addition, functional obsolescence equals the excess cost to cure.

(e) For purposes of measuring functional obsolescence, the property with a deficiency or superadequacy in subsection (1) of this rule can be the entire subject property or one or more portions of the property that are being analyzed for the existence of functional obsolescence. If the entire property has multiple deficiencies or superadequacies, multiple applications of the procedure in subsection (1) of this rule may be required to measure the total functional obsolescence.

(f) Some methods of measuring depreciation may capture more than just physical depreciation. The depreciation measured may include elements of functional and external obsolescence.

(A) If in subsection (1)(a)(A) an age-life method is used to estimate the total depreciation of the property with a deficiency or superadequacy, no additional functional obsolescence should be deducted from the depreciated reproduction cost of the individual assets.

(B) If in subsection (1)(a)(A) the selling price of used equipment is used to estimate the depreciation of the property with a deficiency or superadequacy, no additional functional obsolescence should be deducted from the depreciated reproduction cost of the individual assets.

(C) In situations where all functional obsolescence of individual assets is fully captured by the depreciation method used, there may be additional functional obsolescence due to the assemblage of the individual assets into the layout of the property. Functional obsolescence due to layout can be accurately measured using the procedures described in subsection (1) of this rule. However, care must be taken to avoid double counting the functional obsolescence.

(2) The deduction for functional obsolescence in the replacement cost approach equals the cost to cure or the value of the loss (if less).

(a) When using the procedure in subsection (1)(a) of this rule to estimate the deduction for functional obsolescence in the replacement cost approach, steps (A) and (B) must equal zero (\$0).

(b) When using consistent estimates of reproduction and replacement cost new, physical depreciation, and functional and external obsolescence, the market value indicator from replacement cost approach must equal the market value indicator from the reproduction cost approach. (see example 3)

(3) Definitions:

(a) The reproduction cost approach is an appraisal method for estimating market value of the subject property. The formula for this method is:

Market Value equals the Reproduction Cost New less physical depreciation less functional obsolescence less external obsolescence.

(A) The reproduction cost new is the cost to construct a new replica of the subject property as of the appraisal date using the same materials, design, layout, quality of workmanship and embodying the deficiencies and superadequacies of the subject property.

(B) The appraisal approach where the appraiser estimates the depreciation based on the selling prices of used equipment is a reproduction cost approach when the used prices utilized in the appraisal are for pieces of equipment that are replicas of the subject equipment. The formula for this method is: Market Value equals the Reproduction Cost New less the depreciation from used equipment prices less the functional and external obsolescence not captured in the used equipment prices.

(C) The appraisal approach where the appraiser estimates the depreciation using an age-life method is a reproduction cost approach when the starting point is the reproduction cost new. The formula for this method is: Market Value equals the Reproduction Cost New less the depreciation from an age-life analysis less the functional and external obsolescence not captured in the age-life analysis.

(b) The replacement cost approach is an appraisal method for estimating the market value of the subject property as of the appraisal date. The formula for this method is:

Market Value equals the Replacement Cost New less physical depreciation less the cost to cure (or the value of the loss, if less) less external obsolescence. The replacement cost new is the cost, as of the appraisal date, to construct a property having equivalent utility to the subject property but built with the most cost-effective materials, design, and layout. The most cost effective materials, design, and layout is that combination of investment (cash out-flows) and the present value of anticipated after tax net income (cash in-flows) that produces the highest net present value.

(c) Functional Obsolescence is a loss in market value of a subject property when there is a reasonable feasibility of a typical prospective purchaser acquiring, without undue delay, a replacement property possessing an equivalent utility but is more cost-effective in terms of design, materi-

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als, or equipment. Functional obsolescence exists only by a comparison between the subject and the replacement property. There is no loss in value due to functional obsolescence unless the physically depreciated reproduction cost of the subject property minus the physically depreciated replacement cost of the replacement property plus the cost to cure (or value of the loss, if less) is greater than zero.

(A) Functional obsolescence due to a deficiency requiring a substitution or modernization is caused by an asset present in the subject property that is standard compared to the replacement property.

(B) Functional obsolescence due to a deficiency requiring an addition is caused by a component that is missing from the subject property that is present in the replacement property

(C) Functional obsolescence due to a superadequacy is caused by an asset present in the subject property that is not present in the replacement property and does not contribute to value an amount equal to its cost.

(d) The physically depreciated reproduction cost of the property with a deficiency or superadequacy is the cost, as of the appraisal date, to construct a new replica of that property using the same materials, design, layout, quality of workmanship and embodying the deficiencies and superadequacies of that property less the amount of physical depreciation due to physical deterioration associated with wear and tear, the impact of the elements, and aging.

(e) The physically depreciated cost of the replacement property is the cost, as of the appraisal date, to construct a new property with the equivalent utility to the property with the deficiency or superadequacy using the most cost effective materials, design, and layout less the appropriate physical depreciation.

(A) For curable functional obsolescence, the appropriate percent of physical depreciation for the replacement property in subsection (1)(a)(B) is equal to the percent of physical depreciation of the replacement property included in the cost to cure in subsection (1)(a)(C) and (3)(h)(A). For example, if curable functional obsolescence is cured by purchasing and installing a new machine, the replacement property is also new (zero depreciation). (See example 3) However, if curable functional obsolescence is cured by purchasing and installing a used machine that is 70% physically depreciated, the replacement property also must be 70% depreciated. (See example 4)

(B) For incurable functional obsolescence, the appropriate percentage of physical depreciation for the replacement property in subsection (1)(a)(B) is the same percentage of physical depreciation as the percentage of physical depreciation of the property with a deficiency or superadequacy, as it exists in the uncured condition.

(f) Functional obsolescence is incurable if the cost to cure is greater than the value of the loss.

(g) Functional obsolescence is curable if the cost to cure is less than the value of the loss.

(A) To be considered curable, it must be physically possible, legally permissible, and financially feasible to cure the functional obsolescence.

(B) If curing functional obsolescence is required to allow the existing assets to continue to function at their highest and best use and the requirements of subsection (3)(g)(A) are met, the obsolescence is curable even if the cost to cure is greater than the value of the loss. (See Example 6)

(h) The cost to cure equals the net cash out-flow anticipated to be necessary to eliminate the deficiency or superadequacy. This equals:

(A) The physically depreciated replacement cost of the replacement property, plus

(B) The retrofitting cost associated with installing the replacement property in the subject property, plus

(C) The cost to remove the property with a deficiency or superadequacy; less

(D) The salvage value of the property with a deficiency or superadequacy.

(i) The excess cost to cure recognizes that installing an asset in an existing property may cost more than installing the same asset when a property is constructed new on the appraisal date. The excess cost to cure equals:

(A) The retrofitting cost associated with installing the replacement property in the subject property; plus

(B) The cost to remove the property with a deficiency or superadequacy; less

(C) The salvage value of the property with a deficiency or superadequacy.

(j) Retrofitting cost is the cost as of the appraisal date to install an asset in the subject property less the cost as of the appraisal date to install the same asset as part of new construction.

(k) The value of the loss equals the present value of the after-tax loss in anticipated income from the continuing operation of the property with a deficiency or superadequacy compared to the projected operation of the replacement property. For industrial plants, this loss in income is often the result of excess operating costs due to inefficiencies in the subject plant compared to the subject property when cured of the functional obsolescence. The present value includes factors for the time period that the plant will continue to incur the loss in income and an appropriate discount rate. See OAR 150-308-0250 for the appropriate method of calculating the discount rate.

(4) Examples (Assume zero external obsolescence for all examples):

(a) Example 1: An example of incurable functional obsolescence due to a deficiency requiring a substitution or modernization. [Example not included, see ED. Note.]

(b) Example 2. An example of incurable functional obsolescence due to a superadequacy. [Example not included, see ED. Note.]

(c) Example 3: An example of curable functional obsolescence due to a deficiency requiring an addition. [Example not included, see ED. Note.]

(d) Example 4: An example of curable functional obsolescence due to a deficiency requiring a substitution. [Example not included, see ED. Note.]

(e) Example 5: An example of a deficiency in the subject plant that does not indicate the presence of functional obsolescence. [Example not included, see ED. Note.]

(f) Example 6: An example of curable functional obsolescence due to a deficiency requiring an addition. [Example not included, see ED. Note.]

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.205

Hist.: REV 6-2001, f. & cert. ef. 12-31-01; Renumbered from 150-308.205-(F), REV 57-2016, f. 8-13-16, cert. ef. 9-1-16; REV 10-2017, f. & cert. ef. 6-15-17

Rule Caption: Re-publishing full version of rule (no changes) through Archives' database, including tables within the examples.

Adm. Order No.: REV 11-2017

Filed with Sec. of State: 6-15-2017

Certified to be Effective: 6-15-17

Notice Publication Date:

Rules Amended: 150-308-0580

Subject: 150-308-0580 Allocation of Mobile Aircraft Property Value: This rule was last adopted 08/13/2016 (effective 09/01/2016). Department of Revenue is filing this notice to have the full version of the rule, including tables previously available from the agency, re-published by the Secretary of State. There are no changes to the rule content itself at this time.

Rules Coordinator: Shannon Ball—(503) 945-7938

150-308-0580

Allocation of Mobile Aircraft Property Value

(1) The percent of the unit value of the mobile aircraft property of air transportation and air express companies assessed by the department pursuant to ORS 308.515 allocated to Oregon shall be determined by the following formula: [Formula not included. See ED. NOTE.]

(2) Definitions:

(a) Ground time is the amount of time between the moment an aircraft comes to rest from one flight until it first moves under its own power for purposes of another flight.

(b) Flight time is the amount of time between the moment an aircraft first moves under its own power for the purposes of flight until it comes to rest at the next point of landing. Oregon flight time is the product of the total flight time of a flight originating or terminating in Oregon multiplied by the Oregon percentage of the airport-to-airport distance of the flight.

(c) A departure occurs each time an aircraft takes off from one airport for purposes of flight to another airport.

(d) Tons enplaned and deplaned are the total number of tons (passengers and cargo) loaded on and unloaded from company aircraft. Passengers and cargo entering a carrier's system on interchange flights are considered as enplaning or deplaning at the interchange point.

(e) Equated plane hours are calculated by multiplying the actual plane hours of an aircraft type by the ratio of the average value of that aircraft type to the base value. The base value is defined as the average value of one designated aircraft type for each air transportation company.

(f) Equated departures are calculated by multiplying the actual number of departures for an aircraft type by the ratio of the average value of that aircraft type to the base value.

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(3) If, for a particular company, reliable data for all three factors in the formula are not available, the department shall determine the factors, for which the company provided inadequate data according to the best of its information and belief.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 308.550

Hist.: RD 2-1987(Temp), f. & cert. ef. 4-3-87; RD 7-1987, f. & cert. ef. 6-5-87; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89, Renumbered from 150-308.550(2); RD 5-1990, f. 11-15-90, cert. ef. 12-1-90; Renumbered from 150-308.550(2)-(A), REV 59-2016, f. 8-13-16, cert. ef. 9-1-16; REV 11-2017, f. & cert. ef. 6-15-17

Rule Caption: Re-publishing full version of rule (no changes) through Archives' database, including tables within the examples.

Adm. Order No.: REV 12-2017

Filed with Sec. of State: 6-15-2017

Certified to be Effective: 6-15-17

Notice Publication Date:

Rules Amended: 150-310-0010

Subject: 150-310-0010 Adjustment of Operating Tax Rate Limitation for Gap Bonds: This rule was last adopted 08/11/2016 (effective 09/01/2016). Department of Revenue is filing this notice to have the full version of the rule, including tables previously available from the agency, re-published by the Secretary of State. There are no changes to the rule content itself at this time.

Rules Coordinator: Shannon Ball—(503) 945-7938

150-310-0010

Adjustment of Operating Tax Rate Limitation for Gap Bonds

(1) For purposes of this rule the following definitions apply:

(a) A "Qualifying Taxing District Obligation," also known as "Gap Bond," means any portion of a local taxing district 1997-98 levy that was used to repay:

(A) Principal and interest for any bond issued before December 5, 1996, and secured by a pledge or explicit commitment of ad valorem property taxes or a covenant to levy or collect ad valorem property taxes;

(B) Principal and interest for any other formal, written borrowing of moneys executed before December 5, 1996, for which ad valorem property tax revenues have been pledged or explicitly committed, or that are secured by a covenant to levy or collect ad valorem property taxes;

(C) Principal and interest for any bond issued to refund an obligation described in paragraph (A) or (B) of this section.

(b) "Operating Tax Rate Limit" means the maximum rate of operating taxes certified by the Department of Revenue that a district may impose.

(c) "Operating Taxes" means ad valorem property taxes that are subject to a permanent rate limit under section 11, Article XI of the Oregon Constitution, or statutory rate limit under ORS 310.236(4), if applicable.

(2) Any taxing district whose Operating Tax Rate Limit was established in 1997-98 and whose operating levy certification for 1997-98 included levy amounts for Gap Bonds which were part of a tax base or other permanent continuing levy authority must have its Operating Tax Rate Limit increased for the tax year following the repayment of the debt obligation as outlined in this rule.

(3) In the year in which the Gap Bond debt is repaid the district must send a letter at least 30 days prior to the end of the fiscal year to the county assessor of each county in which the district imposes taxes with a copy directed to the:

Property Tax Division
Oregon Department of Revenue
PO Box 14380
Salem Oregon 97309-5075

At a minimum, the letter must include the following information:

(a) Name of the taxing district

(b) Levy amount identified as Gap Bonds on the 1997-98 M-50 Form

(c) Amount of Gap Bond debt paid by that levy which has been retired during the current tax year

(4) Within 30 days of receipt of its copy, the Department of Revenue must send a letter to the district and a copy of the letter to the county assessor(s): The letter must include the following information:

(a) The name of the district

(b) The Operating Tax Rate Limit before recalculation

(c) The new Operating Tax Rate Limit increase after recalculation

(d) The tax year for which the new Operating Tax Rate Limit increase will first apply

(5) The Department of Revenue must calculate the increase in the Operating Tax Rate Limit for the district by:

(a) Calculating the percentage the Measure 5 operating tax was reduced in the Measure 50 calculations to arrive at the Measure 50 tax without compression.

(b) Applying the reduction percentage in subsection (a) above to the Gap Bond or portion of Gap Bond authority.

(c) Adding the resulting amount remaining after the reduction calculation in (b) above to the Measure 50 (M50) tax without compression.

(d) Dividing the new total amount calculated in subsection (c) by the 1997-98 assessed value used to calculate the operating rate limit of the taxing district to arrive at the new Operating Tax Rate Limit. The rate will be carried out seven places and truncated.

(6) The final Operating Tax Rate Limits after all Gap Bond debt is repaid and the calculations, as done by the Department of Revenue, are shown in the following table: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 310.055

Hist.: REV 13-1999, f. 12-30-99, cert. ef. 12-31-99; REV 5-2000, f. & cert. ef. 8-3-00; REV 3-2001, f. 7-31-01, cert. ef. 8-1-01; Renumbered from 150-310.055, REV 24-2016, f. 8-11-16, cert. ef. 9-1-16; REV 12-2017, f. & cert. ef. 6-15-17

Rule Caption: Re-publishing full version of rule (no changes) through Archives' database, including tables within the examples.

Adm. Order No.: REV 13-2017

Filed with Sec. of State: 6-15-2017

Certified to be Effective: 6-15-17

Notice Publication Date:

Rules Amended: 150-310-0060

Subject: 150-310-0060 Joint District Apportionment Formula: This rule was last adopted 08/11/2016 (effective 09/01/2016). Department of Revenue is filing this notice to have the full version of the rule, including tables previously available from the agency, re-published by the Secretary of State. There are no changes to the rule content itself at this time.

Rules Coordinator: Shannon Ball—(503) 945-7938

150-310-0060

Joint District Apportionment Formula

(1) When a taxing district extends into more than one county and it levies a dollar amount ad valorem levy, the total of the levy must be apportioned among the counties in which it lies according to the assessed value to be used to compute the tax rate of the district in each county. The percentage of value in each county must be calculated to enough digits so that the tax rate for that levy will be the same in each county when truncated at the seventh (7th) digit.

(2) Separate apportionments must be done for each category of levy subject to the limits of Section 11b, Article XI of the Oregon Constitution.

(3) Example: The example district lies in two counties and has a levy subject to the School Operations limit. The levy is \$1,000. The example shows only one category of levy, if the district has more than one category, separate allocations would be done for each category of levy. [Example not included. See ED. NOTE.]

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 310.110

Hist.: RD 12-1987, f. 12-18-87, cert. ef. 12-31-87, Renumbered from 150-310.105; RD 3-1991, f. 12-30-91, cert. ef. 12-31-91; REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 10-2002, f. & cert. ef. 12-31-02; Renumbered from 150-310.110, REV 24-2016, f. 8-11-16, cert. ef. 9-1-16; REV 13-2017, f. & cert. ef. 6-15-17

Rule Caption: Re-publishing full version of rule (no changes) through Archives' database, including tables within the examples.

Adm. Order No.: REV 14-2017

Filed with Sec. of State: 6-15-2017

Certified to be Effective: 6-15-17

Notice Publication Date:

Rules Amended: 150-310-0560

Subject: 150-310-0560 Limitation of Losses in Computing Household Income: This rule was last adopted 08/11/2016 (effective 09/01/2016). Department of Revenue is filing this notice to have the full version of the rule, including tables previously available from the

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agency, re-published by the Secretary of State. There are no changes to the rule content itself at this time.

Rules Coordinator: Shannon Ball—(503) 945-7938

150-310-0560

Limitation of Losses in Computing Household Income

To determine household income, each source of income (loss) must be considered separately. A business, a farm, rents, royalties, and income from the disposition of tangible or intangible property are separate sources of income or loss. To determine household income, combine all income or loss from each separate source. If any net loss results from such combination, the net loss is limited to \$1,000.

Example 1: In 1997, Elizabeth had retirement income of \$7,000, a farm loss of \$5,000 and a net operating loss deduction of \$2,000. Elizabeth's household income is figured below: [Calculations not included. See ED. NOTE.]

Example 2: Assume the same facts as in Example 1 above. In addition to the farm loss, Elizabeth is a partner in a partnership. The partnership's main activity is farming. In 1997, the partnership had income of \$10,000. Elizabeth's share of the partnership income is \$6,000. Elizabeth's household income is figured below: [Calculations not included. See ED. NOTE.]

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 310.630

Hist.: 12-31-77; 12-31-78; 12-31-84; Renumbered from 150-310.630(8) to 150-310.630(8)-(A), 12-31-85; RD 10-1986, f. & cert. ef. 12-31-86, Renumbered from 150-310.630(8)-(A); Renumbered from 150-310.630(8)(b)-(F) to 150-310.630(7)(b)-(F), RD 5-1997, f. 12-12-97, cert. ef. 12-31-97; REV 8-2001, f. & cert. ef. 12-31-01, Renumbered from 310.630(7)(b)-(F); Renumbered from 150-310.630(8)(b)-(F), REV 24-2016, f. 8-11-16, cert. ef. 9-1-16; REV 14-2017, f. & cert. ef. 6-15-17

Rule Caption: Re-publishing full version of rule (no changes) through Archives' database, including tables within the examples.

Adm. Order No.: REV 15-2017

Filed with Sec. of State: 6-15-2017

Certified to be Effective: 6-15-17

Notice Publication Date:

Rules Amended: 150-311-0100

Subject: 150-311-0100 Applying Offsets to Ad Valorem Tax Levies: This rule was last adopted 08/12/2016 (effective 09/01/2016). Department of Revenue is filing this notice to have the full version of the rule, including tables previously available from the agency, re-published by the Secretary of State. There are no changes to the rule content itself at this time.

Rules Coordinator: Shannon Ball—(503) 945-7938

150-311-0100

Applying Offsets to Ad Valorem Tax Levies

Offsets due to a district shall be deducted from the total of all ad valorem levies within each category certified by the district on the basis of the ratio that each category of levy bears to the total amount of all levies of the district.

Example: A county levies for general government, school operations (county school fund), and exempt debt service. This illustrates allocation of an offset of taxes paid under ORS 311.160 (1/4 of 1% offset). [Formula not included. See ED. NOTE.]

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 311.105

Hist.: RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; Renumbered from 150-311.105(1)(b), REV 28-2016, f. 8-12-16, cert. ef. 9-1-16; REV 15-2017, f. & cert. ef. 6-15-17

Rule Caption: Re-publishing full version of rule (no changes) through Archives' database, including tables within the examples.

Adm. Order No.: REV 16-2017

Filed with Sec. of State: 6-15-2017

Certified to be Effective: 6-15-17

Notice Publication Date:

Rules Amended: 150-311-0800

Subject: 150-311-0800 Calculation of Interest on Refund: This rule was last adopted 08/12/2016 (effective 09/01/2016). Department of Revenue is filing this notice to have the full version of the rule, including tables previously available from the agency, re-published by the Secretary of State. There are no changes to the rule content itself at this time.

Rules Coordinator: Shannon Ball—(503) 945-7938

150-311-0800

Calculation of Interest on Refund

(1) Interest on refunds is based on the method the taxpayer used to pay taxes. Interest is calculated from the first trimester due date if full payment, or two-thirds payment, was made with a discount on or before November 15. If payments were made on the installment basis, interest is calculated on the amount overpaid as of each trimester due date or date of payment, whichever is later. Refund interest accrues at the rate specified in ORS 311.812(3) until paid.

(2) When the taxpayer pays in full, with discount, on or before the first trimester due date, interest is calculated on the amount overpaid from that date.

Example: The 2000-01 tax statement for \$4,000 was corrected to \$400 resulting in an overpayment of tax. The original tax less discount was paid in full October 17, 2000. The refund on the corrected tax is issued February 19, 2001 and includes interest calculated from the due date, November 15, 2000, to the date of refund, February 19, 2001. [Table not included. See ED. NOTE.]

(3) When the taxpayer chooses to pay in trimesters, interest is calculated on the amount overpaid on each trimester due date when there is no balance on the account. When there is a balance on the account in the year for which overpayment occurred, the overpayment is credited to the trimester(s) still outstanding. No refund interest is paid until the overpayment exceeds the total amount of corrected tax.

(a) When trimester payments are made timely, the overpayment is credited as follows:

Example: The 2000-01 tax statement for \$3,000 was corrected to \$2,400. Two trimester payments were made timely. The correction is made March 15, 2001. [Table not included. See ED. NOTE.]

(b) When two trimester payments are made after the due date and accrued interest has been calculated, the overpayment is credited as follows:

Example: The 2000-01 tax statement for \$3,000 was corrected to \$2,400. The first trimester payment was made November 20, 2000; the second trimester payment was made February 20, 2001; the account is corrected March 20, 2001. [Table not included. See ED. NOTE.]

(4) When timely payment for the first trimester is sufficient to pay two-thirds or more of the corrected tax, then the corresponding discount must be credited.

(a) When all three trimester payments have been made timely, the overpayment is credited as follows:

Example: The 2000-01 tax statement for \$3,000 was corrected to \$400. All trimester payments were made on or before the due dates. The correction is made June 15, 2001. The original payment for the first trimester covers the full corrected tax so the three percent discount is granted. [Table not included. See ED. NOTE.]

(b) When two trimester payments have been made timely, the overpayment is credited as follows:

Example: The 2000-01 tax statement for \$3,000 was corrected to \$300. Two trimester payments were made timely. The correction was made and the refund was issued on March 15, 2001. The original payment for the first trimester covered the full corrected tax so the three percent discount was granted. [Table not included. See ED. NOTE.]

(c) When the first trimester payment is made timely, the overpayment is credited as follows:

Example: The 2000-01 tax statement for \$2,400 was corrected to \$1,200. The first trimester payment was made timely. The correction was made on January 15, 2001. Since the original payment for the first trimester payment covers the corrected first and second trimester payments, a 2% discount is calculated on the full original trimester payment. [Table not included. See ED. NOTE.]

(5) Refund interest is not paid on an overpayment of delinquent interest. Refund interest accrues only on the tax principal overpaid. Any difference between the original late payment interest and the correct late payment interest is also included in the amount to be refunded.

Example: The 2000-01 tax statement for \$4,000 was corrected to \$400. Full payment was made November 20, 2000. The refund was made March 19, 2001. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 311.812

Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; REV 3-2001, f. 7-31-01, cert. ef. 8-1-01; Renumbered from 150-311.812(3), REV 27-2016, f. 8-12-16, cert. ef. 9-1-16; REV 16-2017, f. & cert. ef. 6-15-17

Rule Caption: Re-publishing full version of rule (no changes) through Archives' database, including tables within the examples.

Adm. Order No.: REV 17-2017

Filed with Sec. of State: 6-15-2017

Certified to be Effective: 6-15-17

Notice Publication Date:

Rules Amended: 150-312-0010

Subject: 150-312-0010 Interest Calculated to the Date of Publication: This rule was last adopted 08/11/2016 (effective 09/01/2016). Department of Revenue is filing this notice to have the full version

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of the rule, including tables previously available from the agency, re-published by the Secretary of State. There are no changes to the rule content itself at this time.

Rules Coordinator: Shannon Ball—(503) 945-7938

150-312-0010

Interest Calculated to the Date of Publication

The foreclosure publication amount includes all interest accrued as of the date of publication. According to ORS 311.505(2), interest is charged and collected at a specific rate per month, or fraction of a month, until paid. This applies to all years shown in the publication.

Example:

Publication date — Interest computed through
August 16 — September 15
August 22 — September 15
September 17 — October 15

The statutes direct that foreclosure proceedings begin three months after the day of delinquency of taxes of the latest year (ORS 312.050(1)). Newspaper publication schedules may cause the date of publication to vary. This example is not meant to encourage deviation from compliance with the statutes.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 312.030

Hist.: RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; Renumbered from 150-312.030(1)(d), REV 23-2016, f. 8-11-16, cert. ef. 9-1-16; REV 17-2017, f. & cert. ef. 6-15-17

Rule Caption: Re-publishing full version of rule (no changes) through Archives' database, including tables within the examples.

Adm. Order No.: REV 18-2017

Filed with Sec. of State: 6-15-2017

Certified to be Effective: 6-15-17

Notice Publication Date:

Rules Amended: 150-312-0020

Subject: 150-312-0020 Monthly Interest Calculated on All Years in the Foreclosure Process Until Judgment Is Taken: This rule was last adopted 08/11/2016 (effective 09/01/2016). Department of Revenue is filing this notice to have the full version of the rule, including tables previously available from the agency, re-published by the Secretary of State. There are no changes to the rule content itself at this time.

Rules Coordinator: Shannon Ball—(503) 945-7938

150-312-0020

Monthly Interest Calculated on All Years in the Foreclosure Process Until Judgment Is Taken

Interest is calculated on all years in the foreclosure process, from the date of publication to the date the judgment and decree is granted, using the rate and process outlined in ORS 311.505(2) and Oregon Laws 1989, Chapter 796, Sections 10 and 22. Interest is charged and collected on the tax at a rate of one and one-third percent (1 1/3%) per month or fraction of a month until paid. To determine the amount of the additional interest to be included in the judgment and decree where the publication is late and/or judgment is granted late, the following chart provides examples of publication dates and the corresponding interest dates: [Chart not included. See ED. NOTE.] The statutes direct that foreclosure proceedings begin three months after the day of delinquency of taxes of the latest year (ORS 312.050(1)) with judgment and decree granted 30 days thereafter. Newspaper publication schedules may cause the date of publication to vary. This example is not meant to encourage deviation from compliance with the statutes.

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

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 312.030

Hist.: RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; Renumbered from 150-312.030(2), REV 23-2016, f. 8-11-16, cert. ef. 9-1-16; REV 18-2017, f. & cert. ef. 6-15-17

Department of State Lands

Chapter 141

Rule Caption: Establish Rules Governing the Oregon Ocean Science Trust Competitive Grant Program.

Adm. Order No.: DSL 4-2017

Filed with Sec. of State: 6-15-2017

Certified to be Effective: 7-1-17

Notice Publication Date: 3-1-2017

Rules Adopted: 141-141-0100, 141-141-0110, 141-141-0120, 141-141-0130, 141-141-0140, 141-141-0150, 141-141-0160

Subject: The 2013 Legislature established the Oregon Ocean Science Trust and Fund (ORS 196.565-569). The duties of the Trust are to:

1. Promote peer-reviewed, competitive research and monitoring that leads to increased knowledge and understanding of Oregon's ocean and coastal resources.

2. Promote innovative, collaborative, community-oriented, multi-institutional approaches to research and monitoring related to Oregon's ocean and coastal resources.

3. Enhance the state's capacity for peer-reviewed scientific ocean and coastal research.

4. Subject to available funding, establish and execute a competitive grant program to conduct research and monitoring related to Oregon's ocean and coastal resources.

The Oregon Ocean Science Trust has engaged in rulemaking to establish the rules that will govern the competitive grant program.

Rules Coordinator: Sabrina L. Foward—(503) 986-5236

141-141-0100

Purpose and Applicability

These rules govern the Oregon Ocean Science Trust (OST) competitive grants program, subject to available funding.

Stat. Auth.: ORS 196.565(6)

Stats. Implemented: ORS 196.565-196.569

Hist.: DSL 4-2017, f. 6-15-17, cert. ef. 7-1-17

141-141-0110

Policies

(1) The OST shall promote peer-reviewed, competitive research and monitoring that leads to increased knowledge and understanding of Oregon's ocean and coastal resources.

(2) The OST shall promote innovative, collaborative, community-oriented, multi-institutional approaches to research, monitoring and data management related to Oregon's ocean and coastal resources.

(3) The OST shall identify funding priorities periodically through a public process.

Stat. Auth.: ORS 196.565(6)

Stats. Implemented: ORS 196.565-196.569

Hist.: DSL 4-2017, f. 6-15-17, cert. ef. 7-1-17

141-141-0120

Definitions

(1) "Ocean Science Trust (OST)" has the meaning provided in ORS 196.565.

(2) "Oregon's Ocean and Coastal Resources" means the ocean and coast resources under the jurisdiction of the state of Oregon and adjacent waters.

(3) "Period of Performance" means the period between the project start and end dates as specified in the executed grant agreement.

(4) "Person" means any individual or entity.

(5) "Science and Technical Advisory Committee (STAC)" has the meaning provided in ORS 196.451.

(6) "Technical Review" means a review of the proposed projects requested by the OST and performed by individuals qualified by their experience to evaluate proposed activities.

Stat. Auth.: ORS 196.565(6)

Stats. Implemented: ORS 196.565-196.569

Hist.: DSL 4-2017, f. 6-15-17, cert. ef. 7-1-17

141-141-0130

Competitive Grants Process

(1) The OST shall oversee a competitive grants process that will carry out funding priorities established by the OST.

(2) The OST, or a third party administrator selected by the OST, shall solicit and review proposals to address the funding priorities.

(3) The competitive grants process shall consist of the following:

(a) Development of a request for proposals (RFP).

(A) The OST shall develop an RFP for each grant cycle.

(B) Pre-proposals may be requested depending on the scope of the RFP. Requirements of any pre-proposals will be described in the RFP.

(b) Issuance and notification of the RFP.

(A) Any person may submit a proposal to the competitive grant program in accordance with the eligibility requirements outlined in the RFP.

(B) Details of proposal length and scope will be specified in the RFP and shall include information necessary for objective evaluation of the submission such as but not limited to:

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- (i) Qualifications of investigators to complete the work;
 - (ii) Alignment of proposed activities with OST funding priorities;
 - (iii) Potential partners and their anticipated involvement;
 - (iv) Identification of a fiscal agent;
 - (v) Planned outcomes;
 - (vi) Realistic project timeline;
 - (vii) Budget and budget justification, including sources and amount of cash and in-kind matching funds;
 - (viii) Peer review process; and
 - (ix) Data management plan.
- (c) Technical review of all proposals received in response to the RFP.
- (A) Written evaluation of each project based on established criteria shall be provided by technical reviewers to the OST along with funding recommendations. Review criteria may include but are not limited to:
- (i) Projects that are cost-effective, innovative, collaborative and multi-institutional; and
 - (ii) Include involvement by, or address issues relevant to, community stakeholders with interests in Oregon's ocean and coastal resources.
- (B) Actual and perceived conflicts of interest shall be avoided in the review process.
- (d) Selection of proposals to be funded, contingent upon availability of funds.

(A) In the event a third party administrator is selected by the OST to manage the competitive grants process, the third party shall provide recommendations to the OST based on the technical review process. The OST is the final decision authority in selection of proposals to be funded.

(B) The OST's funding decision shall take into account overall programmatic considerations such as but not limited to:

- (i) The balance of priorities addressed;
- (ii) Geographic regions and communities represented; and
- (iii) The diversity of participants within the portfolio of proposals being considered.

(C) Notification of supported projects shall be publicly disseminated.

(e) Development and execution of grant agreements with selected proposals and their applicants.

(A) Each successful applicant shall enter into a grant agreement with the OST or its administrator.

(B) All grant agreements will be on a form provided by the OST that has been approved by the Oregon Department of Justice.

(C) No grant expenditures may be incurred outside of the period of performance.

(D) The grant agreement describes requirements as determined by the OST, which may include but are not limited to those related to:

- (i) Schedule and submission of deliverables;
- (ii) Project management;
- (iii) Allowable administrative costs;
- (iv) Insurance requirements;
- (v) Schedule for the release of grant payments;
- (vi) Requirements for release of funds;
- (vii) Data accessibility;
- (viii) Compliance with local, state, federal and other applicable regulations; and
- (ix) Programmatic and financial reporting.

(f) Engagement and management of interactions with applicants during proposal development and review, and project and grant execution including but not limited to technical and fiscal oversight.

(A) The OST, or third party administrator, will serve as the point-of-contact for management and questions regarding all aspects of the grant program.

(B) The OST reserves the right to negotiate and/or adjust the final grant amount and work plan prior to the award as appropriate and consistent with OST policy and funds available.

(g) Management of grant reporting requirements.

(A) Programmatic and financial reporting requirements will be outlined in the grant agreement.

(B) Continued support of grants is subject to compliance with grant agreements and approval of required reports.

(C) Future funding is contingent on successful completion and reporting of existing grants.

Stat. Auth.: ORS 196.565(6)
Stats. Implemented: ORS 196.565-196.569
Hist.: DSL 4-2017, f. 6-15-17, cert. ef. 7-1-17

141-141-0140

Management of data reporting and data management requirements

(1) Data and information collected or created under OST grants must be publicly visible and accessible in a timely manner at no cost, with the exception of reproduction costs, in a format which is machine-readable and based on open standards along with the metadata necessary to find and properly use the data.

(2) The grant agreement shall stipulate when data access must be provided. The data access deadline shall be no later than two years after the performance period end except where limited by law, regulation, policy or by security requirements.

(3) The RFP shall stipulate requirements for proposals to include data management and accessibility plans.

(4) Applicants who fail to share data as required in the grant agreement may be subject to a number of sanctions including but not limited to denial of future awards, freezing of funds in any current awards or repayment of the award.

Stat. Auth.: ORS 196.565(6)
Stats. Implemented: ORS 196.565-196.569
Hist.: DSL 4-2017, f. 6-15-17, cert. ef. 7-1-17

141-141-0150

Request for Qualifications (RFQ)

(1) The OST may request qualifications in order to support a project or activity that has not been proposed for funding through the competitive grants process but may be necessary for the OST to address one or more funding priorities.

(2) Proposals submitted by qualified applicants shall be managed in the same manner as outlined in OAR 141-141-0130 and 141-141-0140 above.

Stat. Auth.: ORS 196.565(6)
Stats. Implemented: ORS 196.565-196.569
Hist.: DSL 4-2017, f. 6-15-17, cert. ef. 7-1-17

141-141-0160

Competitive Grants Program Evaluation

(1) The OST shall request that the competitive grants program be evaluated at regular intervals by the STAC based on evaluation criteria developed by the STAC in consultation with the OST.

(2) Results of the evaluation will be communicated to the Oregon State Legislature, the State Land Board and the public.

Stat. Auth.: ORS 196.565(6)
Stats. Implemented: ORS 196.565-196.569
Hist.: DSL 4-2017, f. 6-15-17, cert. ef. 7-1-17

Department of State Police

Chapter 257

Rule Caption: In the matter of adopting permanent rules for the statewide School Safety Tipline.

Adm. Order No.: OSP 2-2017

Filed with Sec. of State: 6-6-2017

Certified to be Effective: 6-6-17

Notice Publication Date: 5-1-2017

Rules Adopted: 257-095-0000, 257-095-0010, 257-095-0030, 257-095-0040, 257-095-0050, 257-095-0060, 257-095-0070, 257-095-0080, 257-095-0090, 257-095-0100

Subject: To prescribe the policies and procedures for operation and use of the statewide School Safety Tip Line Program (SSTL). The SSTL is established to facilitate the safety and health of students.

(1) SSTL was established by act of the 2016 Oregon Legislature, Oregon Laws 2016, Chapter 74, authorizing the Department of State Police to establish and operate a statewide tip line for students and other members of the public to use to confidentially report information concerning threats to student safety or potential threats to student safety.

(2) Section 1(3) of Oregon Laws 2016, Chapter 74 requires the Department of State Police to adopt rules necessary to establish and operate the tip line.

(3) The SSTL is a program organized within the Public Safety Services Bureau of the Department of State Police for the purpose of facilitating the safety and health of students.

Rules Coordinator: Shannon Peterson—(503) 507-9021

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257-095-0000

Purpose of Rules

Rules adopted herein prescribe the policies and procedures for operation and use of the statewide School Safety Tip Line Program (SSTL). The SSTL is established to facilitate the safety and health of students.

Stat. Auth.: ORS 165.570(2)
Stats. Implemented: ORS 165.570
Hist.: OSP 3-2016(Temp), f. 12-13-16, cert. ef. 12-14-16 thru 6-10-17; OSP 2-2017, f. & cert. ef. 6-6-17

257-095-0010

Authority

(1) SSTL was established by act of the 2016 Oregon Legislature, Oregon Laws 2016, Chapter 74, authorizing the Department of State Police to establish and operate a statewide tip line for students and other members of the public to use to confidentially report information concerning threats to student safety or potential threats to student safety.

(2) Section 1(3) of Oregon Laws 2016, Chapter 74 requires the Department of State Police to adopt rules necessary to establish and operate the tip line.

(3) The SSTL is a program organized within the Public Safety Services Bureau of the Department of State Police for the purpose of facilitating the safety and health of students.

Stat. Auth.: OL 2016, ch 74, sect. 1(3)
Stats. Implemented: OL 2016, ch 74
Hist.: OSP 3-2016(Temp), f. 12-13-16, cert. ef. 12-14-16 thru 6-10-17; OSP 2-2017, f. & cert. ef. 6-6-17

257-095-0030

Definitions

As used in these rules:

(1) "Anonymous" means not identified by name.

(2) "Confidential Information" means any personally identifiable information acquired by the SSTL, its staff, schools, school districts, Education Service Districts, service providers and local law enforcement, or information that is confidential under other state or federal law.

(3) "Cyberbullying" and "harassment, intimidation or bullying" have the meanings given those terms in ORS 339.351.

(4) "Local law enforcement contact" means a local law enforcement officer designated by the Department of State Police to be notified when the tip line receives a report of a threat to student safety or potential threat to student safety.

(5) "Personally Identifiable Information" means any information that would permit the identification of the person as a person reporting information to the SSTL. It includes, but is not limited to, name, phone number, physical address, email address, and information that identifies the machine or device from which the person made the report.

(6) "Service provider" means a person designated by the department to be notified when the tip line receives a report of a threat to student safety or potential threat to student safety. "Service provider" includes:

- (a) A provider of behavioral health care or mental health care;
- (b) A provider of school-based health care;
- (c) A certificated school counselor;
- (d) A clinical social worker licensed under ORS 675.530; or
- (e) A professional counselor or a marriage and family therapist licensed under ORS 675.615.

(7) "Student" means a student of:

- (a) A school district, as defined in ORS 332.002;
- (b) A community college, as defined in ORS 341.005;
- (c) A private school that provides educational services to kindergarten through grade 12 students;

- (d) A public charter school as defined in ORS 338.005;
- (e) A career school, as defined in ORS 345.010; or
- (f) A public university listed under ORS 352.002.

(8) "Threat to student safety" includes, but is not limited to, a threat or instance of:

- (a) Harassment, intimidation, or bullying or cyberbullying;
- (b) Suicide or self-harm; and
- (c) Violence against others.

(9) "Tip" means reports of information concerning threats to student safety or potential threats to student safety made by phone call, text message, email, web-form submission, or an application on a mobile device submission accepted by the SSTL.

(10) "Tip line" means a statewide resource designed to accept information concerning threats to student safety or potential threats to student safety through methods of transmission including:

- (a) Telephone calls;

(b) Text messages;

(c) Electronically through the Internet; and

(d) Use of an application on a mobile device.

(11) "Tip Line Technician" means contracted staff who receive, route and ensure follow-up occurs for calls, e-mails, text messages, and online tips 24 hours a day, seven days a week.

Stat. Auth.: OL 2016, ch 74, section 1(3)
Stats. Implemented: OL 2016, ch 74
Hist.: OSP 3-2016(Temp), f. 12-13-16, cert. ef. 12-14-16 thru 6-10-17; OSP 2-2017, f. & cert. ef. 6-6-17

257-095-0040

Responsibilities

(1) Department of State Police is responsible for:

(a) Establishing a statewide tip line for students and other members of the public to confidentially report information concerning threats or potential threats to student safety;

(b) The ownership and management of data entered into the SSTL;

(c) Following all records retention laws and other applicable laws and rules;

(d) Analyzing and interpreting data entered into the SSTL to help schools improve their response to safety issues;

(e) Maintaining strict confidentiality of confidential information received through tips, documents and communications submitted to the SSTL;

(f) Coordinating outreach and programmatic support to schools, school districts, Education Service Districts, law enforcement agencies and service providers involved in or entering the program;

(g) Establishing a process for documenting the closure of tips and ensuring that the process is being used.

(h) Generating analysis, reports and studies. Analysis, reports and studies shall contain only aggregated information and shall not contain any information that personally identifies reporters or any students. Reports may contain aggregated information concerning how referrals were handled by local law enforcement and service providers and the outcomes of the referrals.

(i) Ensuring training materials explain that reporters may make an anonymous report or, if they identify themselves, how their identity is protected and how it may be shared as set out in OAR 291-095-0080(2).

(j) Where possible, incorporate information on behavioral health treatment services standards under OAR chapter 309, division 019 in training and presentation information.

(2) The SSTL vendor contracted by the Department of State Police is responsible for:

(a) Receiving SSTL tips via phone, email, application on a mobile device, website submission and text message as described in OAR 257-095-0060 and processing those tips;

(b) Ensuring adequate staffing of Tip Line Technicians to handle tip volume;

(c) Ensuring SSTL is functional and capable of operation 24 hours per day, seven days per week;

(d) Providing SSTL database access and the ability to extract data for analysis to designated persons authorized by the Department of State Police;

(e) Following up on reported tips and documenting the status of tips through the SSTL;

(f) Prompting schools to provide updated responsible staff and service provider, if applicable, contact information on a regular basis;

(g) Providing physical and online information security protection including administrative, technical, and physical safeguards to protect assets and data from loss, misuse, unauthorized access, disclosure, alteration, and destruction.

(h) Ensuring Tip Line Technicians have the requested qualifications, training, and experience in taking crisis calls.

(i) Maintaining a policy and procedure manual that contains specific protocols to be used depending on the nature of the tip as well as general procedures regarding interviews and taking information.

(3) The schools, school districts or Education Service Districts are responsible for:

(a) Determining, keeping current, and providing to the SSTL lists of responsible staff and service providers capable of handling tips relayed to the school, school district or Education Service District by the SSTL;

(b) Verifying the authenticity and validity of received reported threat to student safety or potential threat to student safety;

(c) Forwarding tip information to law enforcement or service providers as appropriate;

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(d) Following up on assigned tips, providing information about updates and outcomes to the SSTL to the extent not prohibited by any applicable federal or state confidentiality provisions, and closing tips through the SSTL.

Stat. Auth.: OL 2016, ch 74, section 1(3)
Stats. Implemented: OL 2016, ch 74
Hist.: OSP 3-2016(Temp), f. 12-13-16, cert. ef. 12-14-16 thru 6-10-17; OSP 2-2017, f. & cert. ef. 6-6-17

257-095-0050

Incidents Reportable through the School Safety Tip Line Program

Threats to student safety or potential threats to student safety that are reportable to the SSTL include, but are not limited to harassment, intimidation or bullying, cyberbullying, suicide or self-harm and violence against others.

Stat. Auth.: OL 2016, ch 74, section 1(3)
Stats. Implemented: OL 2016, ch 74
Hist.: OSP 3-2016(Temp), f. 12-13-16, cert. ef. 12-14-16 thru 6-10-17; OSP 2-2017, f. & cert. ef. 6-6-17

257-095-0060

Receipt of Tips of Reportable Incidents

Tips received via the SSTL are classified and processed for appropriate school, school district or Education Service District, local law enforcement or service provider response.

(1) When the SSTL receives an incoming communication, the Tip Line Technician shall:

(a) Ask the caller's identity (for tips provided via phone and text) or confirm the identity of the person making the tip (for tips provided via website or application on a mobile device). If the person making the tip does not wish to disclose their identity, the Tip Line Technician shall also accept an anonymous tip;

(b) The Tip Line Technician shall immediately assess the situation and ensure that students (and others) are safe from harm. The Tip Line Technician may not delay in contacting responders and/or school officials if there is an immediate threat to safety;

(c) Tip Line Technicians will attempt to capture and confirm the following data by asking questions identified on templates. Components of this factual accounting process may include but are not limited to:

(i) Who is/was involved in the incident? The name of any person reported to be involved in the incident must be documented. The reporter may choose to be anonymous;

(ii) The school where the individual making the tip (if applicable) and student(s) involved are enrolled and the age of the students involved;

(iii) Specific details about the location of incident (i.e. building name/number, floor, room number, etc.);

(iv) Whether the individual reporting an incident is reporting about him/herself or another party;

(v) If more than one person is involved in the incident, the relationship, if any, of those other individuals to the school or school system;

(vi) What happened, (who did/said what to whom, etc.);

(vii) When the incident occurred (time and date, prior events if any);

(viii) Whether a school staff member was notified, and how the school responded;

(ix) Whether treatment by a service provider was sought;

(x) Name of additional institutions/agencies involved.

(d) Tip Line Technicians will use their training and expertise to categorize by type of incident and prioritize a reported or potential threat to school safety by defined level of urgency for response.

(2) The SSTL software may capture Caller ID information, email addresses, and/or Internet Protocol (IP) addresses as part of the technical solution. This information will only be retrieved, used or disclosed in accordance with Oregon Law and these rules.

(3) The Tip Line Technician shall log all tip information into the SSTL system and transmit the tip electronically to the appropriate school, school district or Education Service District, service provider or local law enforcement contacts.

Stat. Auth.: OL 2016, ch 74, section 1(3)
Stats. Implemented: OL 2016, ch 74
Hist.: OSP 3-2016(Temp), f. 12-13-16, cert. ef. 12-14-16 thru 6-10-17; OSP 2-2017, f. & cert. ef. 6-6-17

257-095-0070

Tip Examination, Classification and Referrals

(1) Once a tip is received by the SSTL, Tip Line Technicians shall classify the reported tip based on a pre-identified set of values to designate the level of threats to student safety and level of response needed;

(2) Tips received by Tip Line Technicians shall be referred to the appropriate school, school district or Education Service District, service provider or law enforcement;

(a) Suspicious activity or non-criminal, school-safety concerns (i.e. general tips about bullying, suspicious behavior/actions discovered on social media, fights between students, reports of individuals on school grounds who may not have an appropriate reason for being there) will be routed to schools, school districts, Education Service Districts, school administrators, service providers and also to local law enforcement if the severity of the incident warrants a law enforcement response;

(b) Tips concerning potential criminal activity shall be forwarded to the appropriate law enforcement agency for that jurisdiction in addition to the notifications in subsection (2)(a);

(3) When an incoming tip received by the SSTL presents or appears to present a situation of immediate danger or threat of serious harm, the Tip Line Technician shall immediately contact the appropriate law enforcement contacts, appropriate education provider contacts, or service providers relaying all known information about the tip;

(4) When Tip Line Technicians determine it appropriate based on the nature of the tip and their training and experience, they will forward the tip to other hotlines that are available for reports of violence or crisis prevention;

(5) Tips or requests for social services that are not within the scope of the program will be referred to other hotlines or resources as available;

(6) The Tip Line Technician shall document in the SSTL system the person[s] to whom the tip was referred.

Stat. Auth.: OL 2016, ch 74, section 1(3)
Stats. Implemented: OL 2016, ch 74
Hist.: OSP 3-2016(Temp), f. 12-13-16, cert. ef. 12-14-16 thru 6-10-17; OSP 2-2017, f. & cert. ef. 6-6-17

257-095-0080

Information Confidentiality and Disclosure

(1) Any entity or person authorized to receive information and data from the SSTL is responsible for maintaining the confidentiality of confidential information and must use and disclose any information or data it receives only as provided in these rules or required by law;

(2) The SSTL may not disclose the identity of any person who submits a tip except as provided in these rules or required by law. If a person making a report chooses to identify themselves, they do so with the expectation that their identity will be disclosed only to persons authorized to receive tip information under these rules and only for the purpose of following up on tips.

(3) The SSTL may release aggregated or summary tip information for reporting purposes but shall not release any confidential information. In order to protect the reporting process, limited updates may be provided as long as they do not violate any laws or policies;

(4) Photo, videos and other media images received of a sexual nature shall only be forwarded to law enforcement. Information regarding the tip can be sent to the school, but not the sexual images attached to the tip;

(5) Information acquired by the SSTL will not be disclosed except as provided in these rules or as required by law.

Stat. Auth.: OL 2016, ch 74, section 1(3)
Stats. Implemented: OL 2016, ch 74
Hist.: OSP 3-2016(Temp), f. 12-13-16, cert. ef. 12-14-16 thru 6-10-17; OSP 2-2017, f. & cert. ef. 6-6-17

257-095-0090

Anonymity

Persons submitting a tip via the SSTL may choose to identify themselves or to remain anonymous. The identity of persons making reports who choose to identify themselves shall be protected and disclosed only as set out in OAR 257-095-0080(2).

Stat. Auth.: OL 2016, ch 74, section 1(3)
Stats. Implemented: OL 2016, ch 74
Hist.: OSP 3-2016(Temp), f. 12-13-16, cert. ef. 12-14-16 thru 6-10-17; OSP 2-2017, f. & cert. ef. 6-6-17

257-095-0100

Reporting and Data Analysis

(1) Information gathered in operation of the SSTL may be utilized for the purpose of generating reports to track outcomes of actions taken in response to a tip, or used to analyze and adapt the operation of the SSTL Reports and analysis shall contain only aggregated information and shall not contain information that personally identifies reporters or any students;

(2) Full SSTL data access is limited to the Department of State Police;

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(a) Schools, school districts and Education Service Districts shall only have access to their own school(s) or jurisdiction data for following up on tips, analysis, reporting and managing school policies;

(b) Schools are responsible for the appropriate dissemination of information to law enforcement, service providers, and other authorities in accordance with these rules and any other applicable laws and rules;

(c) The Department of State Police shall create annual and other reports as necessary. Reports shall contain only aggregated information and shall not contain any information that personally identifies reporters, any students, or specific schools.

Stat. Auth.: OL 2016, ch 74, section 1(3)

Stats. Implemented: OL 2016, ch 74

Hist.: OSP 3-2016(Temp), f. 12-13-16, cert. ef. 12-14-16 thru 6-10-17; OSP 2-2017, f. & cert. ef. 6-6-17

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Department of Transportation
Chapter 731

Rule Caption: Adoption of DAS public records fee policy into ODOT administrative rule

Adm. Order No.: DOT 1-2017(Temp)

Filed with Sec. of State: 5-25-2017

Certified to be Effective: 5-25-17 thru 11-17-17

Notice Publication Date:

Rules Amended: 731-001-0025

Subject: These rule changes will keep ODOT in compliance with Executive Order 16-06 by amending 731-001-0025 to adopt DAS policy 107-001-0030 (Public Records Requests Fees and Charges) in its entirety.

Rules Coordinator: Lauri Kunze—(503) 986-3171

731-001-0025

Public Records Request Requirements and Fees

All information in the custody of the Oregon Department of Transportation will be disclosed or protected from disclosure in accordance with Chapter 192 of the Oregon Revised Statutes.

(1) As used in this rule, the following definitions apply:

(a) “Certified copies” or “true copy certification” means photocopies, that on the date copied, are true and accurate copy of the original record. The Department cannot certify as to any subsequent changes or manipulation of the record.

(b) “Public record” is defined in ORS 192.410(4).

(c) “Research” means the compilation of information:

(A) That is not readily and immediately available from a single source or a group of related sources; or

(B) That requires a search to locate.

(2) A request for public records that are held by the Department may be made in writing and submitted by email, fax, postal mail or hand delivery. The request must:

(a) Include name and address of the person requesting the public record;

(b) Include the requester’s email address and telephone number; and

(c) Adequately describe the record(s) requested including subject matter.

(3) The Department will acknowledge receipt of a request, state whether the Department believes it has responsive records, identify an estimate of the expected cost of meeting the request, and the expected date the information will be provided. The regular discharge of duties of the Department will be neither interrupted nor interfered with because of time or effort required to respond to the request.

(4) The Department adopts DAS statewide policy 107-001-0030 (dated 2-15-17) in its entirety for the calculation of fees, fee waivers or fee reductions.

(5) Pre-payment of fees may be required by the Department before records are released.

(6) Electronic Records. Copies of requested electronic records may be provided in the format or manner maintained by the Department. The Department will perform all downloading, reproducing, formatting and manipulating of records.

(8) Provisions in this rule do not apply to records held by the Driver and Motor Vehicle Services Division of the Department of Transportation.

(9) A person who believes there has been an unreasonable denial of a fee waiver or fee reduction may petition the Attorney General or the district attorney in the same manner as a person petitions when inspection of a public record is denied under ORS 192.410 to 192.505. The Attorney General,

the district attorney and the court have the same authority in instances when a fee waiver or reduction is denied as it has when inspection of a public record is denied.

Stat. Auth.: ORS 184.616, 184.619, 192.430 & 192.440

Stats. Implemented: ORS 192.410 - 192.505

Hist.: DOT 1-1995, f. & cert. ef. 1-6-95; DOT 2-2006, f. & cert. ef. 1-24-06; DOT 6-2007, f. & cert. ef. 12-24-07; DOT 1-2017(Temp), f. & cert. ef. 5-25-17 thru 11-17-17

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

Rule Caption: Makes technical changes to DMV vehicle dealer and vehicle dismantler rules

Adm. Order No.: DMV 9-2017

Filed with Sec. of State: 5-25-2017

Certified to be Effective: 5-25-17

Notice Publication Date: 3-1-2017

Rules Amended: 735-150-0010, 735-150-0015, 735-150-0020, 735-150-0027, 735-150-0030, 735-150-0110, 735-150-0120, 735-150-0130, 735-150-0160, 735-152-0000, 735-152-0005, 735-152-0031

Subject: OAR 735-150-0130 describes the circumstances DMV may consider when imposing a civil penalty against a dealer found in violation of applicable laws and DMV rules. Those circumstances, as specified in section (2) of the rule, include:

1. The severity of the violation or its impact on the public;
2. The number of similar or related violations;
3. Whether a violation was willful or intentional;
4. The history of all civil penalties and sanctions imposed by DMV against the dealer or principals of the dealership;
5. The number of violations compared to the volume of transactions at the dealership; or
6. Other circumstances determined by DMV to be applicable to the particular violation.

Section (3) of the rule specifies the actions DMV may take after issuing a notice of proposed civil penalty during settlement discussions. For example, before issuing a final order DMV may choose to retain, reassess, reduce or waive the civil penalty amount specified in the notice of proposed civil penalty.

During a recent review of the rule, it was found that language in subsection (3)(a) did not reflect the requirements of ORS 822.020 and 822.040, which list the specific requirements for issuance and renewal of a vehicle dealer certificate. The amendment of OAR 735-150-0130 removes the language in subsection (3)(a) and clarifies that in addition to the options specified in section (3), DMV may impose a sanction as provided in OAR 735-150-0120.

The amendment of OAR 735-150-0110 adds a new violation—failure to pay a civil penalty assessed by DMV—to the schedule of vehicle dealer offenses subject to sanctions and penalties.

The amendment OAR 735-150-0120 adds a new sanction for a violation of amended OAR 735-150-0110 (failure to pay civil penalty assessed by DMV).

The amendment of OAR 735-150-0015(1) and (2), and 735-152-0005(1)(a)(B) updates the type of identification DMV will accept in connection with an application for the issuance or renewal of an Oregon vehicle dealer or vehicle dismantler certificate. The change allows for the acceptance of government issued photo-identification, such as a passport or U.S. military ID, and makes clear that the identification must be valid at the time of presentation. OAR 735-150-0010 and 735-152-0000 are amended to add and update definitions.

Rules Coordinator: Lauri Kunze—(503) 986-3171

735-150-0010

Definitions

As used in this division and ORS Chapter 822:

(1) “Additional (or supplemental) place of business” or “additional (or supplemental) location” means a location, other than one exempted under OAR 735-150-0020, that is more than 500 feet from any other business location of the dealer that is operated under the same name as the main business location.

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(2) "Advertise" means to offer a vehicle for sale or to communicate to the public that a person is acting as a vehicle dealer, by any oral, written, or graphic means including, but not limited to, handbills, the Internet, newspapers, signs, television, billboards, radio, and telephone directories.

(3) "Agent" means any dealer possessing a current valid vehicle dealer certificate issued under ORS 822.020, who accepts applications and fees for the titling and registration of vehicles sold by the dealer and who performs such other duties related to the titling and registration of vehicles as DMV authorizes under the rules set forth in division 150.

(4) "Applicant" means a person that applies for the issuance or renewal of a vehicle dealer certificate under ORS 822.020, 822.040 and these division 150 rules.

(5) "Broker" has the same meaning as "motor vehicle broker" as defined in ORS 822.047(1).

(6) "Brokerage services" has the same meaning as defined in ORS 822.047(1).

(7) "Business day" means Monday through Saturday and does not include Sundays or State of Oregon and Federal legal holidays.

(8) "Buyer," "purchaser" and "lessee" have the same meaning as "owner" as defined in ORS 801.375.

(9) "Cancellation" has the same meaning as "revocation" as defined in section (31) of this rule.

(10) "Certified dealer" means a vehicle dealer who holds a vehicle dealer certificate issued or renewed under ORS 822.020 or 822.040.

(11) "Circumstances beyond the dealer's control," as used in ORS 822.045(3)(b) and OAR 735-150-0050(5) means:

(a) That the dealer could not get the title from any state and the prior security interest holder was paid in full by the dealer; and

(b) The delay was a result of the security interest holder failing to release title; or

(c) DMV may consider the follow mitigating circumstances if those circumstances result in the physical destruction of, or inaccessibility to, vehicle records necessary to prove compliance with ORS 822.045(1) and OAR 735-150-0050(5):

(A) The direct result of clearly-established fraud or other criminal activity against the vehicle dealer, as determined in a criminal or civil action in a court of law or independently corroborated by a report of a law enforcement agency or insurer or the sworn testimony or affidavit of an accountant or the person who actually engaged in the criminal activity. This mitigating circumstance does not apply if the dealer is the perpetrator of the wrongdoing described in this paragraph; or

(B) The direct result of fire, flood or other calamitous event, resulting in physical destruction of, or inaccessibility to vehicle records to prove compliance with ORS 822.045(1) and OAR 735-150-0050(5).

(12) "Closure" means a vehicle dealership that no longer has legal authority to conduct dealer-related activity. For example, a dealer's certificate issued under ORS 822.020 is expired, cancelled, suspended or revoked.

(13) "Clearly marked" means the notice and dealer contact information required under ORS 822.040(4)(b) and OAR 735-150-0033 is conspicuously posted on the window of each display vehicle, is in plain view of the public and is legible at a distance of six feet or more.

(14) "Date of sale," or use of similar terms to indicate the day that the sale occurred, means the date that the purchaser takes possession of the vehicle. This does not apply to vehicles purchased by a dealer at wholesale auction. With respect to auto auctions and for purposes of consignor payment under ORS 822.060(1)(d), "date of sale" means the date upon which the consigning party delivers the necessary title documents to the purchasing dealer.

(15) "Dealer" means a person who engages in any of the activities described in ORS 822.005, except those persons exempted by ORS 822.015.

(16) "Dealership," "place of business" or "business location" means a location within the State of Oregon where activities specified in ORS 822.005 take place.

(17) "Designated dealer" means a certified dealer who has been authorized to act as an agent of DMV under OAR 735-150-0040.

(18) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(19) "DMV Administrator" means the administrator of the Driver and Motor Vehicles Services Division of the Oregon Department of Transportation.

(20) "Employee," for purposes of ORS 822.015 and OAR division 150 means a person over whom a dealer exercises the type of control typically associated with an employer, including but not limited to:

(a) Determining the frequency, method and amount of compensation;
(b) Determining whether the person's work is continuous or intermittent;

(c) Determining the hours or frequency of a person's work; or

(d) Retaining the ability to terminate the relationship.

(21) "Good faith effort" as used in ORS 822.045(3) means action satisfactory to DMV that a vehicle dealer complied with the requirements set forth in OAR 735-150-0050(1) and (2).

(a) DMV will determine that the dealer's efforts are in good faith if written documentation is provided that verifies:

(A) Action(s) was taken by the dealer within ten (10) days of sale to resolve problems with providing transfer of ownership; and

(B) The dealer provided complete and timely information to the customer concerning any problems encountered and actions being taken to resolve them.

(b) DMV will not accept a good faith effort by a dealer if, before the sale of the vehicle, the dealer knows or reasonably should know that title transfer could not be completed within 30 days.

(22) "Licensed dealer" as used in ORS 822.015, 822.045 and division 150 means a person who is currently licensed as a vehicle dealer in another jurisdiction.

(23) "Location," "main business location" or "main dealership" means a location identified and listed as the dealer's main business location on the most current application for vehicle dealer certificate.

(24) "Normal business hours" means all times during which a dealer engages in any of the activities described in ORS 822.005, except as exempted by ORS 822.015.

(25) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation or any other legal or commercial entity.

(26) "Permanent revocation" means to permanently revoke a vehicle dealer certificate and the right to apply for a vehicle dealer certificate.

(27) "Probation" means a period of time specified by DMV during which a vehicle dealer may continue to operate, but only under the terms or conditions established by DMV.

(28) "Principal" means any owner, partner of a partnership, corporate officer, proprietor of a sole proprietorship, LLC member, or other person who controls the business entity.

(29) "Purchaser" has the same meaning as buyer or lessee.

(30) "Rebuilder" means a person engaged in conducting a "vehicle rebuilding business" as specified in ORS 822.070.

(31) "Revocation" means to void and terminate a vehicle dealer certificate. Unless permanently revoked, DMV will specify the period of time before the person subject to the revocation may apply for a new vehicle dealer certificate.

(32) "Sanction" means an action taken against a vehicle dealer by DMV in cases of non-compliance, fraud, misuse or abuse of privileges granted by a vehicle dealer certificate pursuant to a violation of the Oregon Vehicle Code or any rule adopted by DMV relating to vehicle dealers or the operation of a vehicle dealership.

(33) "Suspension" means a period of time specified by DMV during which a vehicle dealer is prohibited from:

(a) Buying, selling, trading, exchanging any vehicle or providing brokerage services. This includes, but is not limited to, providing information about price, quality, availability, payment terms, or any other information specific to the sale of a vehicle; and

(b) Acting as DMV's agent.

(34) "Violation" means any violation by a person or vehicle dealer of the Oregon Vehicle Code or any rules adopted by DMV in accordance with ORS 822.009(1) and (2).

(35) "Warning" means a documented oral warning to the principal of a dealership or a written correction notice issued to the principal, or an employee of the dealership.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.035

Stats. Implemented: ORS 822.005 - 822.080

Hist.: MV 7-1987, f. & ef. 7-13-87; MV 39-1989, f. & cert. ef. 10-3-89; MV 8-1991, f. & cert. ef. 7-19-91; MV 22-1991, f. 9-27-91, cert. ef. 9-29-91; MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 6-1994, f. & cert. ef. 7-21-94; DMV 2-1996, f. & cert. ef. 4-18-96; DMV 17-2002, f. & cert. ef. 9-20-02; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05; DMV 24-2005, f. 11-18-05, cert. ef. 1-1-06; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 31-2009, f. 12-22-09, cert. ef. 1-1-10; DMV 13-2015, f. 12-17-15, cert. ef. 1-1-16; HWD 1-2017, f. & cert. ef. 5-23-17; DMV 9-2017, f. & cert. ef. 5-25-17

735-150-0015

Dealer Applications

(1) An applicant for a vehicle dealer certificate under ORS 822.020 must submit the following to the DMV Business Regulation Section:

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(a) A completed and signed DMV Application for Three Year Vehicle Dealer Certificate (DMV Form 735-370);

(b) A completed and signed DMV Surety Bond (DMV Form 735-370B);

(c) A completed and signed DMV Certificate of Insurance form or DMV Liability Insurance Certification of Exemption (DMV Form 735-7024);

(d) A valid government-issued photo identification for each principal;

(e) All applicable fees; and

(f) The following documentation certifying completion of the education and test requirements prescribed by ORS 822.027:

(A) A certificate of education completion issued by an authorized education provider as evidence that the applicant has completed the education requirements under ORS 822.027(1)(a); or

(B) A completed and signed DMV Education Requirements Certification of Exemption (DMV Form 735-370C), if an applicant is exempt from the education and test requirements under ORS 822.027(2).

(2) An applicant for a renewal of vehicle dealer certificate under ORS 822.040 must submit the following to the DMV Business Regulation Section:

(a) A completed and signed DMV Application for Three Year Vehicle Dealer Certificate (DMV Form 735-370);

(b) A completed and signed DMV Surety Bond form (DMV Form 735-370B), if the applicant is submitting a new bond, or proof acceptable to DMV that a valid surety bond is in effect at the time of renewal. Proof includes, but is not limited to a notation on DMV records or other evidence acceptable to DMV that the required bond is in effect.

(c) A completed and signed DMV Certificate of Insurance form or DMV Liability Insurance Certification of Exemption (DMV Form 735-7024);

(d) A valid government-issued photo identification for each principal;

(e) All applicable fees; and

(f) The following documentation certifying completion of the education and test requirements prescribed by ORS 822.027:

(A) A certificate of education completion issued by an authorized education provider as evidence that the applicant has completed the education requirements under ORS 822.027(1)(b); or

(B) A completed and signed DMV Education Requirements Certification of Exemption (DMV Form 735-370C), if an applicant is exempt from the education and test requirements under ORS 822.027(3).

(3) In addition to the requirements of sections (1) and (2) of this rule, the applicant must submit a completed and signed DMV Supplemental Dealer/Rebuilder Vehicle Dealer Certificate Application (DMV Form 735-372) for each additional business location other than the dealer's primary business location.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.012, 822.020, 822.025, 822.027, 822.040

Stats. Implemented: ORS 802.012, 822.020, 822.025, 822.027, 822.040, 822.050

Hist.: DMV 4-1996, f. & cert. ef. 7-26-96; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 5-2011, f. & cert. ef. 4-22-11; DMV 14-2015, f. 12-17-15, cert. ef. 1-1-16; DMV 9-2017, f. & cert. ef. 5-25-17

735-150-0020

Exemptions From Vehicle Dealer Certification Requirement

(1) A person who rents or leases space to a vehicle dealer who holds a current valid certificate is not a dealer as defined in OAR 735-150-0010.

(2) The following apply where there is a formal display of vehicles, such as an auto show, by a group of dealers for a period of ten (10) days or less:

(a) Except as otherwise provided in this section and ORS 822.015(3), a dealer participating in a display must either be a certified vehicle dealer or a manufacturer of vehicles not engaged in sales to the public;

(b) A person who only rents or leases space to a participating dealer does not need a vehicle dealer certificate;

(c) A certified vehicle dealer does not need a supplemental certificate; and

(d) This section does not apply to RV shows held in accordance with OAR 735-150-0045.

(3) The exemption in ORS 822.015(1)(b) will be narrowly construed to exempt from dealer regulatory requirements only those persons who engage in buying, selling or exchanging vehicles as a mere incident to their personal ownership and use of those vehicles. This includes a business or corporate entity that holds such vehicles primarily for its own transportation needs, but not primarily for sale or exchange. No person may apply for certificates of title for the purpose of avoiding dealer regulatory requirements while dealing in vehicles.

(4) A person is not a rebuilder if that person:

(a) Is an employee of a certified vehicle dealer; or

(b) Is engaged solely in the repair of damaged vehicles at the request of the registered owner(s) of the vehicle(s).

(5) An employee of a dealer as defined in 735-150-0010 is not required to have a separate dealer certificate in order to buy or sell vehicles on behalf of his or her employer.

(6) A certified vehicle dealer does not need a supplemental certificate for the location of an auction conducted by the dealer. This exemption applies when all the following conditions exist:

(a) Vehicles sold at the auction are consigned to the dealer;

(b) Vehicles are sold on the basis of the highest bid or most favorable offer;

(c) The auction does not exceed three (3) consecutive days; and

(d) The dealer does not own the property where the auction is conducted. If the dealer rents or leases the property where the auction is conducted, the rent/lease period must not exceed three (3) consecutive days.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.015, 822.035

Stats. Implemented: ORS 822.015

Hist.: MV 7-1987, f. & ef. 7-13-87; MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 6-1994, f. & cert. ef. 7-21-94; DMV 2-1996, f. & cert. ef. 4-18-96; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05; DMV 31-2009, f. 12-22-09, cert. ef. 1-1-10; DMV 13-2015, f. 12-17-15, cert. ef. 1-1-16; DMV 9-2017, f. & cert. ef. 5-25-17

735-150-0027

Refusal to Issue or Renew Vehicle Dealer Certificate

(1) DMV will not issue or renew a vehicle dealer certificate to an applicant who submits an application that is incomplete or contains false information.

(2) DMV will not issue or renew a vehicle dealer certificate to an applicant when it determines a principal of the applicant dealer is financially or operationally involved with any dealership whose certificate or right to apply for a certificate is currently suspended, canceled or revoked. Additionally, DMV will not issue an original or renewal vehicle dealer certificate to any applicant when it determines a principal of the applicant dealer was within one (1) year of the date of the application financially or operationally involved with any dealership whose certificate or right to apply for a certificate is currently suspended, canceled or revoked.

(3) DMV will issue or renew a vehicle dealer certificate on a probationary basis when it determines a principal of the applicant dealer is financially or operationally involved with any other dealer whose certificate or right to apply for a certificate is currently on probation. The probationary status of the new certificate will expire and attain regular status on the same date the probation period ends for the other dealership.

(4) As provided in ORS 822.035(8) and (9), DMV will not issue a vehicle dealer certificate under 822.020 to an applicant who has been issued a similar certificate from another jurisdiction that has been revoked or is currently suspended unless the applicant possesses a current, valid vehicle dealer certificate issued under 822.020. Nothing in this section precludes a vehicle dealer who holds a current, valid vehicle dealer certificate issued under 822.020 from obtaining a vehicle dealer certificate under 822.020 or a supplemental certificate under 822.040 or to renew a certificate under 822.040.

(5) DMV will not issue an original or renewal vehicle dealer certificate until such time as it is satisfied the applicant meets all requirements for issuance of a certificate found in ORS Chapter 822 and OAR chapter 735, division 150.

(6) DMV will not issue or renew a vehicle dealer certificate to an applicant whose business name is identical to or indistinguishable from an existing dealer name. DMV may consider geographic location and other factors at its discretion when determining the ability to distinguish between two similarly named dealerships.

(7) When DMV refuses to issue a vehicle dealer certificate, DMV will retain the fees submitted with the application to cover the cost of processing the application.

(8) An applicant who has been refused issuance of a vehicle dealer certificate is entitled to a contested case hearing as provided in the Oregon Administrative Procedures Act under ORS 183.413 to 183.500.

(9) The refused applicant's request for a hearing must be submitted in writing to and received by DMV within 60 days of the date of the refusal. A hearing request received in a timely manner will not result in issuance of a certificate, pending the outcome of the hearing. In the case of a refusal to renew, the dealer may continue to operate under the old certificate in accordance with ORS 183.430(1), pending the outcome of the hearing, except when the agency finds that such continued operation would constitute a serious danger to the public health or safety and extends the hearing request period to 90 days in accordance with ORS 183.430(2).

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.035 & 822.050

Stats. Implemented: ORS 822.050

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Hist.: MV 8-1991, f. & cert. ef. 7-19-91; MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 6-1994, f. & cert. ef. 7-21-94; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 9-2017, f. & cert. ef. 5-25-17

735-150-0030

Dealer Location Regulations

(1) Except as permitted under section (2) of this rule, each business location established by a dealer must:

(a) Have sufficient space to display one or more vehicles of the type the dealer has been issued a certificate to sell;

(b) Provide a means for the public to contact the dealer or an employee of the dealer at all times during the dealer's normal business hours;

(c) Display an exterior sign, permanently affixed to the land or a building, that identifies the dealership by the name printed on the vehicle dealer certificate, with letters clearly visible to the major avenue of traffic; and

(d) Display, in a publicly accessible and conspicuous manner, the vehicle dealer certificate.

(2) Where zoning or local ordinance prevent compliance, DMV may exempt a dealer from the requirements of subsections (1)(a), (b), or (c) of this rule if the dealer:

(a) Submits a written request for the exemption(s) to DMV documenting why an exemption should be granted;

(b) Agrees to an on-site inspection if required by DMV to determine the validity of the request and to seek reasonable alternatives to the exemption(s) requested; and

(c) Complies with any alternative proposed by DMV that substantially meets the requirements for the exemption requested.

(3) The following apply to dealer locations, unless exempt under OAR 735-150-0020:

(a) A dealer must have a certificate or supplemental certificate for each location where the dealer sells or displays vehicles for sale. A dealer who uses a supplemental place of business, must have a supplemental certificate from DMV before business can be conducted at the supplemental location; and

(b) A dealer who moves a place of business or changes the business name must submit to DMV a completed and signed DMV Application to Correct Dealer/Rebuilder Vehicle Dealer Certificate and obtain a corrected dealer certificate before business can be conducted. The dealer must submit the application at least 3 days before the date of the move or name change.

(4) All locations from which a rebuilder conducts a "vehicle rebuilding business" as described in ORS 822.070 must be listed on an application for a vehicle dealer certificate as either the main business location or a supplemental business location. Each location must comply with the requirements of section (1) of this rule unless DMV grants the rebuilder an exemption under section (2) of this rule.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.025, 822.035, 822.040, 822.045
Stats. Implemented: ORS 822.020, 822.035, 822.040

Hist.: MV 7-1987, f. & ef. 7-13-87; Administrative Renumbering 3-1988, Renumbered from 735-071-0057; DMV 2-1996, f. & cert. ef. 4-18-96; DMV 10-1998, f. & cert. ef. 8-20-98; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05; DMV 9-2017, f. & cert. ef. 5-25-17

735-150-0110

Dealer Offenses Subject to Civil Penalty or Sanction

In addition to any other penalties provided by law, a dealer will be subject to the civil penalties or sanctions in OAR 735-150-0120 to 0140 if the dealer:

(1) Allows or assists a person who is not an employee of the dealer to imply or represent an affiliation with the vehicle dealership in order to engage in any activity pursuant to ORS 822.005.

(2) Fails to submit all taxes or fees due this state or another jurisdiction in connection with the sale or transfer of a vehicle.

(3) Signs a name or allows any other person to sign a name of the owner, security interest holder, or lessor on a certificate of title, salvage title or any motor vehicle document used by DMV in the transfer of title without first obtaining a properly signed Power of Attorney. This section does not apply to a dealer who as an owner, security interest holder or lessor signs their own name on a certificate of title, salvage title or any motor vehicle document used by DMV in the transfer of title.

(4) Purchases, sells, disposes of or has in the dealer's possession, any vehicle that the dealer knows or with reasonable diligence should have known has been stolen or appropriated without the consent of the owner.

(5) Fails to comply with state or federal laws, rules or regulations pertaining to the construction or safety of motor homes, trailers or campers.

(6) Buys, sells, receives, disposes of, conceals or has in the dealer's possession any vehicle or component from which an identification number

has been removed, defaced, covered, altered or destroyed for the purpose of concealing or misrepresenting the identity of the vehicle.

(7) Violates any provision of state or federal law, rule or regulation concerning odometer tampering, repair, readings or notices.

(8) Prints or produces or causes to be printed or produced any certificate of title or certificate of registration without authority, or holds or uses any such certificate or assignment knowing that it has been printed or purchased without authority.

(9) Commits any offense specified in ORS 822.045.

(10) Acts as a vehicle dealer anytime between the day DMV receives notice of cancellation of bond or insurance and the day the vehicle dealer presents proof to DMV of another bond or certificate of insurance.

(11) Issues a temporary registration permit to a person not domiciled in Oregon or who is otherwise not subject to or eligible for Oregon registration.

(12) Fails to notify DMV on a form or in a format approved by DMV within seven (7) calendar days of receipt of a vehicle in inventory, that a vehicle has been transferred to the dealer.

(13) Fails to immediately remove registration plates from vehicles registered in other jurisdictions that are in the dealer's inventory. The dealer may retain the plates until the vehicle is sold.

(14) Fails to destroy registration plates removed from vehicles registered in other jurisdictions at the time of sale if the vehicle is to be titled in Oregon or in a jurisdiction other than that in which the vehicle was previously registered. If the vehicle will be re-registered in the former jurisdiction, the plates may be placed back on the vehicle following the sale.

(15) Completes or allows an employee to complete a DMV Vehicle Identification Number (VIN) Inspection form without physically inspecting the vehicle for its vehicle identification number.

(16) Sells a vehicle of a type not authorized by the dealer's certificate.

(17) Fails to comply with any provision of ORS 822.060 through 822.065 concerning consignment sales.

(18) Fails to comply with any provision of ORS 822.040(4) or OAR 735-150-0033 concerning the display of a vehicle at a location other than the dealer's place of business for the purpose of advertising.

(19) Provides brokerage services and fails:

(a) To provide the written disclosure described in ORS 822.047(2);

(b) To provide the written statement described in ORS 822.047(3); or

(c) To comply with the requirements for broker fees described in ORS 822.047(4).

(20) Knowingly makes a false statement of material fact in:

(a) An application for a dealer certificate, a dealer certificate renewal or attachments thereof;

(b) An application to Correct Dealer/Rebuilder Vehicle Dealer Certificate (DMV Form 735-371);

(c) Any investigation by DMV or law enforcement; or

(d) Any DMV document.

(21) Fails to pay a civil penalty assessed by DMV.

(22) Commits a felony by violating ORS 822.605.

(23) Fails to maintain records described in OAR 735-150-0050(5) or fails to make those records available to DMV, law enforcement personnel or investigators of the Oregon Department of Justice upon their request.

(24) Fails to comply with the requirements of the Oregon Vehicle Code with reference to notices or reports of the transfer of vehicles or campers.

(25) Allows or permits the unlawful use of any certificate or registration plate.

(26) Falsely certifies under ORS 822.033 that the dealer is exempt from filing a certificate of insurance as required by ORS 822.020 or 822.040.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.370, 803.600, 803.625, 821.060, 821.080, 822.035 & 2015 Or. Laws, Ch. 111

Stats. Implemented: ORS 822.005 - 822.080 & 2015 Or. Laws, Ch. 11

Hist.: MV 3-1980, f. 2-15-80, ef. 4-1-80; Suspended by MV 5-1980(Temp), f. & ef. 4-2-80; MV 4-1981, f. 4-1-81, ef. 4-10-81; MV 7-1982, f. & ef. 3-3-82; MV 7-1987, f. & ef. 7-13-87; MV 1-1988, f. & cert. ef. 1-5-88; Administrative Renumbering 3-1988, Renumbered from 735-071-0003; MV 39-1989, f. & cert. ef. 10-3-89; MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 10-1998, f. & cert. ef. 8-20-98; DMV 18-2002, f. & cert. ef. 9-20-02; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05; DMV 24-2005, f. 11-18-05, cert. ef. 1-1-06; DMV 31-2009, f. 12-22-09, cert. ef. 1-1-10; DMV 13-2015, f. 12-17-15, cert. ef. 1-1-16; DMV 14-2015, f. 12-17-15, cert. ef. 1-1-16; DMV 9-2017, f. & cert. ef. 5-25-17

735-150-0120

Sanctions

(1) DMV may impose sanctions when it determines that a dealer has violated any provision of the Oregon Vehicle Code or rules adopted by DMV relating to:

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- (a) The operation of a vehicle dealership;
 - (b) Providing brokerage services; or
 - (c) Vehicle title and registration.
- (2) Sanctions imposed may be against any or all of the following:
- (a) A vehicle dealer's certificate;
 - (b) A dealer's status as DMV's agent; or
 - (c) An owner, partner, corporate officer or other principal of the dealership.

(3) Factors DMV may consider in determining the sanctions to impose include:

- (a) The severity of a violation or its impact on the public;
- (b) The number of similar or related violations;
- (c) Whether a violation was willful or intentional;
- (d) The history of all sanctions, civil penalties and oral or written warnings issued or imposed by DMV against the dealer or principals of the dealership.

(4) If DMV determines that a sanction is warranted, the type of sanction imposed may include one or more of the following:

- (a) Probation under conditions set by DMV pertaining to the dealer's authority to act as an agent of DMV for up to one (1) year;
- (b) Suspension of the dealer's authority to act as an agent of DMV for up to one (1) year;
- (c) Permanent revocation of the dealer's authority to act as an agent of DMV;
- (d) Probation under conditions set by DMV, for up to three (3) years;
- (e) Probation of the dealer's authority to use Electronic Vehicle Registration (EVR) under conditions set by DMV, for up to one year.
- (f) Suspension of the dealer's authority to use Electronic Vehicle Registration (EVR) and right to apply as an EVR dealer for up to three years.

(g) Permanent revocation of the dealer's authority to use Electronic Vehicle Registration (EVR).

(h) Suspension of the dealer's vehicle dealer certificate and the right to apply for a certificate for up to three (3) years including the right to renew the certificate until the period of suspension has been served;

- (i) Permanent revocation of the dealer's vehicle dealer certificate;
- (j) Cancellation of the dealer's vehicle dealer certificate;
- (k) Suspension of the right of a principal of a dealership to apply for a vehicle dealer certificate for a different vehicle-related business or in a different business name for up to three (3) years;

(l) Permanent revocation of the right of a principal of a dealership to apply for a vehicle dealer certificate for a different vehicle-related business or in a different business name;

(m) Immediate suspension as provided in ORS 183.430(2).

(n) For failure to comply with OAR 735-150-0110(21), concerning failure to pay a penalty assessed by DMV:

(A) Suspension of the dealer's vehicle dealer certificate and the right to apply for a certificate for a maximum of three (3) years including the right to renew the certificate or until the civil penalty is paid in full; and

(B) Suspension of the right of a principal of a vehicle dealership to apply for a vehicle dealer certificate for a different vehicle-related business or in a different business name for a maximum of three (3) years or until the civil penalty is paid in full.

(5) A dealer or principal whose vehicle dealer certificate or privileges have been placed on probation, suspended, canceled or revoked is entitled to a contested case hearing as provided in the Oregon Administrative Procedures Act under ORS 183.413 to 183.500.

(6) Except as provided for in sections (7) and (8) of this rule, a dealer's request for a hearing must be submitted in writing to, and received by DMV within 20 days of the date of the notice of penalty. A hearing request received in a timely manner will result in a withdrawal of the penalty, pending the outcome of the hearing.

(7) In the instance of an immediate suspension as provided by, ORS 183.430(2) a dealer's request for a hearing must be submitted in writing to, and received by DMV within 90 days of the date of notice of suspension. A hearing request received in a timely manner will not result in a withdrawal of the suspension, pending the outcome of the hearing.

(8) In the instance of cancellation as provided by ORS 822.050(2) or (3) for failure to satisfy the bond or insurance requirements established by 822.030 and 822.033, a dealer's request for a hearing must be submitted in writing to, and received by DMV within 90 days of the date of the notice of cancellation. A hearing request received in a timely manner will not result in a withdrawal of cancellation, pending the outcome of the hearing.

(9) When a timely request for a hearing is not received, the dealer will have defaulted, waived the right to a hearing and DMV's file will then constitute the record of the case.

Stat. Auth.: ORS 183.430, 184.616, 184.619, 802.010, 802.030, 802.370, 803.600, 803.625, 821.060, 821.080 & 822.005 - 822.080

Stats. Implemented: ORS 822.050

Hist.: MV 2-1983, f. 3-10-83, ef. 5-1-83; MV 4-1983, f. 10-5-83, ef. 10-15-83; MV 1-1984, f. & ef. 1-10-84; MV 7-1987, f. & ef. 7-13-87; Administrative Renumbering 3-1988, Renumbered from 735-071-0013; MV 8-1991, f. & cert. ef. 7-19-91; MV 22-1991, f. 9-27-91, cert. ef. 9-29-91; MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 24-2005, f. 11-18-05, cert. ef. 1-1-06; DMV 1-2015, f. & cert. ef. 4-20-15; DMV 9-2017, f. & cert. ef. 5-25-17

735-150-0130

Civil Penalty Consideration; Certified Vehicle Dealers

(1) A dealer, who violates any provision of the Oregon Vehicle Code or any rule adopted by DMV relating to vehicle dealers, the operation of a vehicle dealership, providing brokerage services or vehicle title and registration, may incur, in addition to any other penalty or sanction provided by law, a civil penalty in an amount of not more than \$1,000 for each violation.

(2) DMV will assess a penalty amount determined by DMV to be appropriate for the particular violation. In determining an appropriate penalty amount, DMV may use the schedule set forth in OAR 735-150-0140 as a guideline and may consider the following:

- (a) The severity of the violation or its impact on the public;
- (b) The number of similar or related violations;
- (c) Whether a violation was willful or intentional;
- (d) The prior history of all civil penalties and sanctions imposed by DMV against the dealer or principals of the dealership;
- (e) The number of violations compared to the volume of transactions at the dealership; or
- (f) Other circumstances determined by DMV to be applicable to the particular violation.

(3) If DMV and a dealer enter into settlement discussions, DMV may review the criteria in section (2) of this rule and do any or all of the following:

- (a) Impose a sanction as provided in OAR 735-150-0120;
- (b) Waive or modify the civil penalty amount; or
- (c) Require that the dealer attend specialized training.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 822.035

Stats. Implemented: ORS 183.430, 822.009, 822.045 & 822.050

Hist.: MV 22-1991, f. 9-27-91, cert. ef. 9-29-91; MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 8-2000, f. & cert. ef. 8-10-00; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 24-2005, f. 11-18-05, cert. ef. 1-1-06; DMV 9-2017, f. & cert. ef. 5-25-17

735-150-0160

Civil Penalty Considerations; Acting as a Dealer Without a Certificate

Any person not issued a vehicle dealer certificate under ORS 822.020, who violates ORS 822.005(1) or any DMV rule relating to the sale of vehicles, will incur, in addition to any other penalty provided by law, a civil penalty not to exceed \$5,000 for each vehicle:

(1) DMV will assess penalties in accordance with the schedule set forth in OAR 735-150-0170.

(2) DMV may evaluate the appropriateness of the amount of a civil penalty assessed in individual cases during settlement discussions and may agree to payment of an amount other than originally assessed. In making such an evaluation, DMV may consider:

- (a) The severity of the violation or its impact on the public;
- (b) The number of similar or related violations;
- (c) Whether the violations were willful or intentional; and
- (d) Any other consideration DMV deems appropriate.

Stat. Auth.: ORS 184.616, 184.619 & 802.010

Stats. Implemented: ORS 822.005 & 822.009

Hist.: MV 22-1991, f. 9-27-91, cert. ef. 9-29-91; MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 6-1994, f. & cert. ef. 7-21-94; DMV 30-2001(Temp), f. 12-14-01 cert. ef. 1-1-02 thru 6-29-02; DMV 2-2002, f. & cert. ef. 2-15-02; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 9-2017, f. & cert. ef. 5-25-17

735-152-0000

Definitions

As used in ORS chapters 822.100 to 822.150 and this division the following definitions apply:

(1) "Acquires," "acquired" or "acquisition" means physical possession of a motor vehicle together with possession of the vehicle's ownership record.

(2) "Applicant" means a person that applies for the issuance or renewal of a dismantler certificate under ORS 822.110, 822.125 and these division 152 rules.

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(3) "Cancellation" has the same meaning as "revocation" as defined in section (20) of this rule.

(4) "Certificate of sale" has the same meaning as defined in ORS 801.183.

(5) "Conspicuously display" as used in ORS 822.133 means letters, numbers or symbols, posted on both sides of the mobile motor vehicle crusher that are:

(a) Six inches or larger in a color that contrasts to the background;

(b) Clearly visible from at least 50 feet in daylight, and readable and easily understood by the public; and

(c) Permanently affixed.

(6) "Date of sale" means the date that a purchaser takes possession of a major component purchased from a dismantler.

(7) "Destroy" has the same meaning as defined in ORS 822.133.

(8) "Dismantler" has the same meaning as defined in ORS 801.236.

(9) "Dismantle" means one or more major component parts are removed from a motor vehicle acquired by a dismantler.

(10) "Dispose" or "disposed of" means a motor vehicle acquired by a dismantler that is transferred to another person or is dismantled or destroyed.

(11) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(12) "Employee" means a person over whom a dismantler exercises the type of control typically associated with an employer, including:

(a) Determining the frequency, method and amount of compensation;

(b) Determining whether the person's work is continuous or intermittent;

(c) Determining the hours or frequency of a person's work; or

(d) Retaining the ability to terminate the relationship.

(13) "Main business location," "primary business location," or "place of business" as used in ORS 822.100 to 822.150 and these rules, means the location identified and listed as the dismantler's main business location on the current business certificate application and does not include a supplemental location or temporary location as defined in sections (23) and (24) of this rule.

(14) "Major component part" has the same meaning as defined in ORS 822.137.

(15) "Mobile motor vehicle crusher" has the same meaning as defined in ORS 822.133.

(16) "Primary ownership document" or "ownership record," as used in ORS 822.135, has the same meaning as "primary ownership" record as defined in 801.402 and includes the primary ownership documents described in OAR 735-020-0010 or an abandoned vehicle certificate described in 735-024-0077.

(17) "Person" means an individual, partnership, corporation, association, or any other business organization if the context in which the term is used could also include these organizational forms.

(18) "Principal" means any owner, partner of a partnership, corporate officer, proprietor of a sole proprietorship, LLC member, or other person who controls the business entity.

(19) "Probation" means a period of time specified by DMV that a dismantler may continue to operate, but only under terms or conditions established by DMV.

(20) "Revocation" means to void and terminate a dismantler certificate or the principal's right to apply for a dismantler certificate.

(21) "Sanction" means an action taken by DMV against a dismantler's certificate, or the principal of a dismantler business, for non-compliance with Oregon law or DMV rule related to dismantlers or the operation of a dismantler business.

(22) "Suspension" means the temporary withdrawal of the authority to act as a dismantler.

(23) "Supplemental location," "supplemental place of business," or "additional place of business" as used in ORS 822.100 to 822.150 and these rules, means a location identified and listed on the dismantler's supplemental business location(s) business application and does not include a temporary location or the dismantler's primary business location approved by DMV to operate under the same business name as the primary business location.

(24) "Temporary location" as used in ORS 822.133 and these rules, means a location other than a dismantler's main business location or supplemental location, at which a dismantler may operate, for a period of 15 consecutive business days or less, a mobile motor vehicle crusher to render motor vehicles into crushed motor vehicles.

(25) "Vehicle Business" includes vehicle dealers as defined in OAR 735-150-0010, dismantlers, towing businesses, vehicle transporters and repair shops.

(26) "Violation" means any violation of Oregon law or a DMV rule applicable to a dismantler issued a certificate or any person engaged in dismantling activities.

(27) "Warning" means a documented warning or correction notice issued to a principal or employee of a dismantler business.

(28) "Wrecked vehicle" has the same meaning as defined in ORS 822.133.

(29) "Written report" means DMV Form 270, Vehicle Dismantler's Notice and the original ownership record for the vehicle.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.125, 822.130, 822.135, 822.137

Stats. Implemented: ORS 822.100, 822.105, 822.110, 822.115, 822.120, 822.125, 822.130, 822.133, 822.135, 822.137, 822.140, 822.145, 822.150

Hist.: MV 7-1987, f. & ef. 7-13-87; MV 10-1991, f. & cert. ef. 8-20-91; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 21-2007(Temp), f. 12-24-07, cert. ef. 1-1-08 thru 6-27-08; DMV 13-2008, f. & cert. ef. 6-23-08; DMV 19-2011, f. 12-22-11, cert. ef. 1-1-12; DMV 9-2017, f. & cert. ef. 5-25-17

735-152-0005

Dismantler Application

(1) In addition to the requirements for an application for a dismantler certificate under ORS 822.110, or a renewal under ORS 822.125, an applicant for a dismantler certificate must submit the following to the DMV Business Regulation Section:

(a) A completed and signed Application for Dismantler Certificate (DMV Form 735-373) that includes:

(A) A certification that the dismantler's business complies with the building, enclosure or barrier requirements under ORS 822.135(1) and OAR 734-040-0030;

(B) Valid government-issued photo identification for each principal as defined in OAR 735-152-0000;

(C) The applicant's National Motor Vehicle Title Information System identification number; and

(D) If the applicant is a corporation, firm or partnership, the Oregon business registry number assigned by the Secretary of State, Corporation Division.

(b) All applicable fees; and

(c) A completed and signed DMV statement of compliance for surety bond or letter of credit.

(2) In addition to the requirements of section (1) of this rule, the applicant must submit a completed and signed Application for Supplemental Dismantler Certificate (DMV Form 735-373A) for each additional business location other than the dismantler's primary business location.

(3) If a dismantler changes the business location or business name on the dismantler's certificate, the dismantler must submit a completed and signed Application to Correct Dismantler Certificate (DMV Form 735-373B) and obtain a corrected dismantler certificate before business can be conducted at the new location or under the new business name.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.100 - 822.150

Stats. Implemented: ORS 822.100 - 822.150

Hist.: DMV 4-1996, f. & cert. ef. 7-26-96; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 19-2011, f. 12-22-11, cert. ef. 1-1-12; DMV 9-2017, f. & cert. ef. 5-25-17

735-152-0031

Dismantler Records

(1) As required by ORS 822.135, 822.137 and this rule, motor vehicle dismantlers must maintain records on each motor vehicle or major component part acquired and taken into the inventory of the dismantler's business. Records must be retained at the dismantler's business location for a period of three years from the date of acquisition. Records must include the following:

(a) For a motor vehicle:

(A) If last titled in Oregon, the Oregon title number, or if the title is not available a copy of the vehicle ownership document;

(B) If last titled in another jurisdiction, a copy of the out-of-state title or ownership document;

(C) If available, the registration plate number and the name of the jurisdiction where the vehicle was last registered;

(D) The year, make and model;

(E) The vehicle identification number;

(F) The date the vehicle was acquired as defined in OAR 735-152-0000;

(G) The vehicle, stock or yard number assigned to the vehicle by the dismantler; and

(H) Any other information required by DMV.

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(b) A description of a major component part that identifies the part, including:

- (A) The physical characteristics of the part;
- (B) The stock or yard number assigned to the part by the dismantler;
- (C) The vehicle identification number of the motor vehicle from which the part came; and
- (D) Any other information required by DMV.

(2) Dismantler records subject to this rule must be maintained in a manner that allows for timely retrieval of any record requested by DMV or a police officer for inspection. The dismantler may maintain original records or an exact copy of the original records in hard copy, on film, or electronically. If first approved by DMV, an exact copy of the dismantler's original records may be stored in some other manner. DMV or a police officer may require that any record printed or completed in a language other than English be accompanied by a copy translated into English.

(3) DMV may inspect dismantler records including books, contracts, documents, letters and records of any type, including electronic and paper records, of any certified dismantler when DMV is investigating a potential violation of Oregon Vehicle Code or DMV rule.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.100 – 822.150

Stats. Implemented: ORS 822.100 – 822.150

Hist.: DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 9-2017, f. & cert. ef. 5-25-17

Rule Caption: Physical Description, Including Sex, on Driver License, Driver Permit or Identification Card

Adm. Order No.: DMV 10-2017

Filed with Sec. of State: 6-15-2017

Certified to be Effective: 7-1-17

Notice Publication Date: 4-1-2017

Rules Adopted: 735-062-0013

Subject: ORS 807.110 states that a driver license will contain a brief description of the person for purposes of identification. In accordance with national standards, Oregon's description has contained an indicator of the person's sex, "M" for male or "F" for female. Within the past year, an Oregon circuit court issued an order stating that a particular individual's sex is non-binary. By policy, DMV has accepted court orders as proof of sex-change to change the sex designation of a person on a driver license, driver permit, identification card and DMV record. However, DMV was unable to issue a card or capture in records an indicator that would signify non-binary as the computer system has no indicator for a third sex designation.

DMV started this rulemaking in conjunction with updating systems so that an "X" in the field for sex will indicate that the sex is not specified. DMV has adopted OAR 735-062-0013 to explain what information is captured as a descriptor in DMV records, which of those descriptors appear on the front of the card, how that information is provided to DMV, and the process to change such information.

Rules Coordinator: Lauri Kunze—(503) 986-3171

735-062-0013

Physical Description on Driver License, Driver Permit or Identification Card

(1) An applicant for a driver license, driver permit or identification card must complete a section of the application that provides for height, weight, sex, hair color and eye color.

(2) DMV captures in its records an applicant's height, weight, hair color, eye color and sex. Hair color and eye color are contained within DMV records but do not appear on the driver license, driver permit or identification card.

(3) As required by ORS 807.110(1)(b), for purposes of identification, a brief description of the person to whom the driver license, driver permit or identification card is issued will appear on the front of the card. Those descriptors are:

- (a) Height shown in feet and inches;
- (b) Weight shown in pounds; and
- (c) Sex shown as "M" for male, "F" for female or "X" for not-specified.

(4) Upon renewal or replacement, an applicant who wishes to change an identifier shown on the driver license, driver permit or identification card or contained in DMV records, must make the change on the application and indicate the desire to change the specified information. An appli-

cant must meet any other applicable requirement and pay any required fee for the renewal or replacement of a driver license, driver permit or identification card.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.110

Stats. Implemented: ORS 802.200, 807.050, 807.110, 807.150, 807.160, 807.280 & 807.400

Hist.: DMV 10-2017, f. 6-15-17, cert. ef. 7-1-17

Department of Transportation,

Highway Division

Chapter 734

Rule Caption: Self-Issuance Program for variance permits

Adm. Order No.: HWD 1-2017

Filed with Sec. of State: 5-23-2017

Certified to be Effective: 5-23-17

Notice Publication Date: 4-1-2017

Rules Adopted: 734-072-0007

Rules Amended: 734-072-0005, 734-072-0010, 734-072-0011, 734-072-0015, 734-072-0020, 734-072-0022, 734-072-0023, 734-072-0025, 734-072-0030

Subject: Division 72 rules establish programs as authorized by ORS 818.220 for telephonic application, self-issuance and electronic issuance of variance permits. This rulemaking specifies the requirements for a motor carrier to qualify for the self-issuance program certification and re-certification, and specifies insurance requirements for intrastate motor carriers. The program saves time, travel and speeds delivery of permits directly to the motor carrier's place of business.

Rules Coordinator: Lauri Kunze—(503) 986-3171

734-072-0005

Scope

Division 72 rules establish programs as authorized by ORS 818.220 for telephonic application, self-issuance and electronic issuance of variance permits. The programs save time, travel and speed delivery of permits directly to the motor carrier's place of business.

Stat. Auth.: ORS 184.616, 184.619, 818.220, 823.011

Stats. Implemented: ORS 818.200, 818.220

Hist.: 1 OTC 9-1980, f. & ef. 4-17-80; HWY 3-1992, f. & cert. ef. 3-25-92; HWY 6-1996, f. & cert. ef. 10-10-96; HWD 1-2017, f. & cert. ef. 5-23-17

734-072-0007

Definitions

For purposes of OAR chapter 734, division 72, the following definitions apply:

(1) "Level I authorization" means a motor carrier may self-issue single trip permits following the telephone application process established in OAR 734-072-0015.

(2) "Level II authorization" means a motor carrier providing service described in OAR 734-076-0115(4) to independently issue a "pre-authorized" self-issue single trip permit to a specific power unit without calling the Motor Carrier Transportation Division.

(3) "Level III authorization" means a motor carrier may independently self-issue single trip permits without contacting the Motor Carrier Transportation Division.

(4) "Incident" means an individual occurrence or event.

(5) "Major Error" means a substantial deviation from accuracy or correctness. Major errors include but are not limited to:

(a) Exceeding the weight limits of a weight-restricted bridge;

(b) Permitting overheight loads into structures without appropriate traffic control or appropriate routing;

(c) Fewer pilot vehicle(s) permitted than are normally required;

(d) Incorrect positioning of pilot vehicle(s);

(e) Missing or inaccurate road restrictions; and

(f) Self-issuing a Level III permit prior to successful completion of a training program administered by the Over-Dimension Permit Unit.

(6) "Roadway Device" means markers, signs, structures (e.g. guardrail), and/or signal devices used to inform, guide and control traffic, including pedestrians, motor vehicle driver, and bicyclists. These devices are usually adjacent, over or along the highways, roads, traffic facilities and other public areas that require traffic control.

(7) "Power Unit" means the vehicle with one or more drive axles providing motive power to the ground.

(8) "Vehicle" means every device in, upon, or by which any person or property can be transported or drawn upon a highway.

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(9) "Electronic Issuance" means providing a copy of the permit to the motor carrier using a method other than delivery via postal mail or pick-up at an authorized ODOT location.

(10) "Reasonable Grounds" means a set of facts or circumstances which would satisfy an ordinary cautious and prudent person that there is reason to believe and which goes beyond mere suspicion.

(11) "Satisfactory Safety Rating" means a safety rating other than unsatisfactory.

Stat. Auth.: ORS 184.616, 184.619, 818.220, 823.011
Stats. Implemented: ORS 818.200, 818.220
Hist.: HWD 1-2017, f. & cert. ef. 5-23-17

734-072-0010

Self-Issuance Program for Variance Permits

(1) The self-issuance program for variance permits provides for three levels of authorization:

(a) Level I authorization allows a motor carrier to self-issue single trip permits following the telephone application process established in OAR 734-072-0015;

(b) Level II authorization allows a motor carrier providing service described in OAR 734-076-0115(4) to independently issue a "pre-authorized" self-issue single trip permit to a "specific" power unit without calling the Motor Carrier Transportation Division; and

(c) Level III authorization allows a motor carrier to independently self-issue single trip permits without contacting the Department.

(2) To qualify for Level I authorization, a motor carrier must make application to the Over-Dimension Permit Unit of the Motor Carrier Transportation Division located in Salem.

(3) To qualify for Level II authorization, a motor carrier must make application to the Over-Dimension Permit Unit of the Motor Carrier Transportation Division located in Salem and certify that it has read and understands Level II requirements.

(4) To qualify for Level III authorization, a motor carrier must make application to the Over-Dimension Permit Unit of the Motor Carrier Transportation Division located in Salem, and the carrier must:

(a) Have an established Motor Carrier Account, register for Oregon Trucking Online and be approved to charge fees to the Motor Carrier Account;

(b) Successfully complete a training program administered by the Over-Dimension Permit Unit. All motor carrier representatives issuing permits under this rule must complete a training program;

(c) Have purchased a minimum of 125 single trip permits for over-size/overweight movements within the 12 months preceding the application for self-issuance of permits;

(d) Sign an agreement of responsibility for the permitted moves;

(e) Have no more than one late highway use tax report as required by ORS 825.139 or Road Use Assessment Fee (RUAF) mileage report as required by OAR 734-082-0003 in the 12 months preceding the application;

(f) Have maintained current vehicle and tax registration with the Department during the 12 months preceding application;

(g) Have no suspensions of Motor Carrier Transportation Division account during the 12 months preceding the application;

(h) Have no more than one late payment of fees due as required by ORS 818.270 in the 12 months preceding the application;

(i) Have no more than a fifteen percent underpayment finding on the most current weight-mile tax audit;

(j) Have no incidents involving damage or potential damage to any roadway, roadway device, or structure as a result of not complying with the provisions of an oversize/overweight permitted movement during the past 12 months preceding the application;

(k) Have a satisfactory safety rating with the United States Department of Transportation, Federal Motor Carrier Safety Administration; and

(L) File proof of general liability insurance with the Motor Carrier Transportation Division in the amount and manner described in OAR 734-072-0011.

(5) Level III approval to self-issue permits is conditionally approved for six months from the effective date of the initial application. Before expiration of the conditional certification, the Department may review the motor carrier's compliance with the following:

(a) Qualifications for entry into Level III self-issue permits program, as described in section (4)(b) and (d) to (L) of this rule; and

(b) Self-issued permits are issued in conformance with the program.

(6) Motor carriers that comply with the requirements as described in section (5)(a) and (b) of this rule may be recertified for up to two years.

(7) Unless otherwise required by the Department, subsequent recertification will be required every two years. Before recertifying, the Department may review the motor carrier's compliance with the requirements described in section (5)(a) and (b) of this rule.

(8) Level I and II authorized carriers may purchase blank permits for the purpose of self-issuance from the Motor Carrier Transportation Division, Over-Dimension Permit Unit office located in Salem. The fee for each blank permit form is the fee required under ORS 818.270, not to exceed \$8.00.

(9) Level III authorized carriers may only self-issue permits through Oregon Trucking Online. The fee for each permit is the fee required under ORS 818.270, not to exceed \$8.00.

(10) The Department may revoke the ability for the carrier to participate in the Self-Issue Permits Program after investigation, if there is reasonable grounds to believe the carrier violated one or more provisions of permit issued under this program.

(11) The Administrator of the Motor Carrier Transportation Division may waive the requirements described in Sections (4) to (7) of this rule.

Stat. Auth.: ORS 184.616, 184.619, 818.220, 823.011

Stats. Implemented: ORS 818.200, 818.220

Hist.: 1 OTC 9-1980, f. & ef. 4-17-80; HWY 3-1992, f. & cert. ef. 3-25-92; HWY 6-1996, f. & cert. ef. 10-10-96; HWY 3-1997, f. & cert. ef. 3-24-97; TO 2-2001, f. & cert. ef. 6-14-01; HWD 4-2009, f. & cert. ef. 3-20-09; HWD 5-2011, f. & cert. ef. 5-27-11; HWD 1-2017, f. & cert. ef. 5-23-17

734-072-0011

Liability Insurance Requirements for Self-Issuance of Variance Permits

(1) The requirement described in OAR 734-072-0010(4)(L) must include evidence of general liability insurance having an annual aggregate limit of not less than \$2,000,000.

(2) Evidence of insurance filing shall be in the form of a certificate of insurance signed by the motor carrier's insurer or in any other manner the Department requires.

(3) If a general liability insurance policy required by OAR 734-072-0010(4)(L) becomes invalid, participation in the self-issuance of variance permits program shall cease and be suspended until an insurance policy meeting the requirements of this section becomes effective and is accepted by the department.

(4) The general liability insurance filing required by OAR 734-072-0010(4)(L) must be in addition to the automobile liability insurance filing requirement found in ORS 825.160.

Stat. Auth.: ORS 184.616, 184.619, 818.220, 823.011

Stats. Implemented: ORS 818.200, 818.220

Hist.: HWY 3-1997, f. & cert. ef. 3-24-97; HWD 1-2017, f. & cert. ef. 5-23-17

734-072-0015

Telephone Application for Self-Issued Variance Permit

(1) The applicant authorized to self-issue permits at Level I must telephone the Motor Carrier Transportation Division Over-Dimension Permit Unit during business hours, Monday through Friday between 7 a.m. and 5 p.m. Pacific Time.

(2) During telephone contact, the permit analyst will review the permit request based upon information furnished by the applicant.

(3) The permit analyst determines if it is appropriate to issue the requested permit. In making the determination, the permit analyst compares the request to the rules and statutes relating to oversize/overweight movement. If the dimensions and weights requested require further analysis, a later call to the applicant may be necessary.

(4) When it is appropriate to issue the requested permit, the permit analyst will inform the applicant of the terms and conditions of the permit. The applicant will, at that time, enter the terms and conditions upon the permit form. The applicant must furnish the preprinted number of the permit form to the permit analyst.

(5) When the applicant has entered upon the permit form the terms and conditions furnished by the permit analyst, the variance permit is valid.

(6) The applicant must send a copy of the completed permit to the Over-Dimension Permit Unit, 3930 Fairview Industrial Drive SE, Salem, Oregon 97302-1166, within 15 days of the effective date of the permit.

(7) The Department may compare copies of Level I self-issued permits to the telephone application for permit provided by the applicant under this rule for the purpose of verifying permit accuracy and compliance with division 72 rules.

Stat. Auth.: ORS 184.616, 184.619, 823.011

Stats. Implemented: ORS 818.200, 818.220

Hist.: 1 OTC 9-1980, f. & ef. 4-17-80; HWY 3-1992, f. & cert. ef. 3-25-92; HWY 6-1996, f. & cert. ef. 10-10-96; TO 2-2001, f. & cert. ef. 6-14-01; HWD 5-2011, f. & cert. ef. 5-27-11; HWD 1-2017, f. & cert. ef. 5-23-17

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734-072-0020

Additional Requirements for Self-Issuance of Variance Permits

(1) When self-issuing a variance permit, the carrier must meet all information requirements contained in ORS 818.225.

(2) A carrier self-issuing permits under Level III authorization must coordinate all moves with the appropriate city or county jurisdictions, as required.

(3) Any incident involving damage or potential damage to any roadway, roadway device or structure resulting from a permitted move under the programs established by division 72 rules must be reported to the Motor Carrier Transportation Division Over-Dimension Permit Unit Manager in Salem within 24 hours of the occurrence.

(4) Level I and II permit forms consist of an original and one copy. The original permit and attachments must be in the possession of the driver of the permitted vehicle as provided under ORS 818.350. The carrier must submit the Road Use Assessment Fee (RUAF) billing calculation and payment along with the Salem copy of the permit, within 15 days from the end of the month in which the permit was issued, to the Over-Dimension Permit Unit, 3930 Fairview Industrial Drive SE, Salem, Oregon 97302-1166.

(5) Level III permits are printed at the motor carrier's place of business through Oregon Trucking Online. The permit and attachments must be in the possession of the driver and the permitted vehicle as provided under ORS 818.350. The carrier must report and pay any Road Use Assessment Fees (RUAF) as described in OAR 734-082-0003.

Stat. Auth.: ORS 184.616, 184.619, 818.220, 823.011
Stats. Implemented: ORS 818.200, 818.220

Hist.: 1 OTC 9-1980, f. & ef. 4-17-80; HWY 3-1992, f. & cert. ef. 3-25-92; HWY 6-1996, f. & cert. ef. 10-10-96; TO 2-2001, f. & cert. ef. 6-14-01; HWD 4-2009, f. & cert. ef. 3-20-09; HWD 5-2011, f. & cert. ef. 5-27-11; HWD 1-2017, f. & cert. ef. 5-23-17

734-072-0022

Program for Electronic Issuance of Single Trip Variance Permits

The program for issuance of single trip variance permits allows carriers to apply for permits in person, by telephone or through Oregon Trucking Online. The completed permit may be mailed or transmitted electronically for pick up by the applicant.

Stat. Auth.: ORS 184.616, 184.619, 818.220, 823.011
Stats. Implemented: ORS 818.200, 818.220

Hist.: HWY 3-1992, f. & cert. ef. 3-25-92; HWY 6-1996, f. & cert. ef. 10-10-96; HWD 4-2009, f. & cert. ef. 3-20-09; HWD 5-2011, f. & cert. ef. 5-27-11; HWD 1-2017, f. & cert. ef. 5-23-17

734-072-0023

Requirements of Carrier to Receive Permits Electronically

(1) In order for a carrier to qualify to receive single trip variance permits electronically the carrier must provide the Over-Dimension Permit Unit a telephone number that allows for the automatic, unattended reception of single trip variance permits.

(2) Carriers that are not subject to ORS 825.474 or 825.480 or do not meet the exemption requirements under ORS 818.200(2) are not eligible to receive permits electronically;

Stat. Auth.: ORS 184.616, 184.619, 818.220, 823.011
Stats. Implemented: ORS 818.200, 818.220

Hist.: HWY 3-1992, f. & cert. ef. 3-25-92; HWY 6-1996, f. & cert. ef. 10-10-96; TO 2-2001, f. & cert. ef. 6-14-01; HWD 5-2011, f. & cert. ef. 5-27-11; HWD 1-2017, f. & cert. ef. 5-23-17

734-072-0025

Limitations on Self-Issued Permits or Single Trip Variance Permits

(1) Self-issued permits or single trip variance permits authorize only single trip movement.

(2) Approved routes consist only of those highways specified on the permit. Separate authorization must be obtained for travel over any other highway, road or street.

(3) Unused Level I and II self-issue permits may be recalled at the discretion of the Chief Engineer or the Administrator of the Motor Carrier Transportation Division. Refund of permit fees for unused permits will be made upon receipt of the permit form and written request in accordance with the Department's refund policy.

Stat. Auth.: ORS 184.616, 184.619, 818.220, 823.011
Stats. Implemented: ORS 818.200, 818.220

Hist.: 1 OTC 9-1980, f. & ef. 4-17-80; HWY 3-1992, f. & cert. ef. 3-25-92; HWY 6-1996, f. & cert. ef. 10-10-96; HWD 1-2017, f. & cert. ef. 5-23-17

734-072-0030

Cancellation of Permits or Authorization

(1) The cancellation authority granted under ORS 818.220 will apply to and govern the cancellation of self-issue and single trip variance permits.

(2) Authorization to self-issue permits may be canceled if a carrier fails to conform to written or verbal direction from the Over-Dimension Permit Unit regarding proper self-issuance of permits.

(3) A motor carrier's Level III authorization to self-issue permits may also be canceled if:

(a) The qualifications specified in OAR 734-072-0010(4) and (5) are not met;

(b) A review of a motor carrier's self-issued permits indicates permits are not in conformance with the program.

Stat. Auth.: ORS 184.616, 184.619, 823.011

Stats. Implemented: ORS 818.200, 818.220

Hist.: 1 OTC 9-1980, f. & ef. 4-17-80; HWY 3-1992, f. & cert. ef. 3-25-92; HWY 6-1996, f. & cert. ef. 10-10-96; TO 2-2001, f. & cert. ef. 6-14-01; HWD 4-2009, f. & cert. ef. 3-20-09; HWD 5-2011, f. & cert. ef. 5-27-11; HWD 1-2017, f. & cert. ef. 5-23-17

Department of Transportation, Motor Carrier Transportation Division Chapter 740

Rule Caption: IFTA Inadequate Records Assessment

Adm. Order No.: MCTD 3-2017

Filed with Sec. of State: 5-23-2017

Certified to be Effective: 5-23-17

Notice Publication Date: 4-1-2017

Rules Amended: 740-200-0045

Subject: These amendments ensure Oregon remains current with International Fuel Tax Agreement (IFTA). IFTA Procedures Manual requires an additional assessment be imposed when a licensee fails to maintain or provide records adequate to support reported fuel tax. Associated materials are applicable to Oregon-based motor carriers who participate in IFTA as a way to report and pay fuel tax to other jurisdictions. The revision to OAR 740-200-0045 reflects the most recent version of IFTA and associated material as the procedures and guidelines for Oregon-based IFTA participants.

Rules Coordinator: Lauri Kunze—(503) 986-3171

740-200-0045

Inadequate Records Assessment

The International Fuel Tax Agreement (IFTA) Articles of Agreement, the IFTA Audit Manual and IFTA Procedures Manual adopted under OAR 740-200-0040 requires an additional assessment be imposed when a licensee fails to maintain or provide records adequate to support reported fuel tax.

(1) If the Department determines the audit records produced by the licensee for the licensee's fleet as a whole do not meet the standard for the adequacy of records specified in the IFTA Procedures Manual, the Department must impose an additional assessment by either:

(a) Adjusting the licensee's reported fleet Miles Per Gallon (MPG) to 4.00; or

(b) Reducing the licensee's reported MPG by twenty percent.

(2) The IFTA Audit Manual describes that an Industry Average MPG may be applied to specific vehicles in a fleet under audit, when fuel or distance records for these vehicles are substantially impaired or missing based on such factors as:

(a) Prior experience of the licensee;

(b) Licensees with similar operations;

(c) Other vehicles in the fleet with similar operations;

(d) Industry averages;

(e) Records available from fuel distributors; and

(f) Other pertinent information the auditor may obtain or examine.

(3) The Motor Carrier Transportation Division will periodically analyze industry fleet data to determine Oregon industry standard average MPG segregated by four vehicle weight groups:

(a) 26,001 — 33,000 pounds;

(b) 33,001 — 60,000 pounds;

(c) 60,001 — 80,000 pounds; and

(d) Over 80,000 pounds.

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

Stats. Implemented: ORS 825.490, 825.494 & 825.555

Hist.: MCTD 1-2006, f. & cert. ef. 2-16-06; MCTD 4-2009, f. 12-22-09, cert. ef. 1-1-10; MCTD 3-2017, f. & cert. ef. 5-23-17

Land Conservation and Development Department Chapter 660

Rule Caption: Revise disturbance baseline attached to LCDC's Sage-Grouse Rule

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Adm. Order No.: LCDD 6-2017

Filed with Sec. of State: 5-25-2017

Certified to be Effective: 5-25-17

Notice Publication Date: 5-1-2017

Rules Amended: 660-023-0115

Subject: Modifies the existing human disturbance baseline values for sage-grouse core areas. The baseline data used to determine the acreage values per core area was changed in order to replace a proprietary data set with one that is state-owned and state maintained. The data represents electric transmission lines in sage-grouse habitat. The revised baseline values are used to track human development in significant sage-grouse habitat to ensure that new development does not exceed the thresholds established in OAR 660, division 23, rule 0115.

Rules Coordinator: Casaria Taylor—(503) 373-0050, ext. 322

660-023-0115

Greater Sage-Grouse

(1) Introduction. Greater Sage-Grouse (hereafter “sage-grouse”) habitat is a unique wildlife resource subject to a variety of threats across a broad, multi-state region. Oregon’s sage-grouse habitat is comprised of a combination of public land managed by the federal government and non-federal land generally in private ownership. Managing private and other nonfederal land for the best possible outcomes requires partnership and cooperation among many stakeholders. Accordingly, private and other non-federal lands are strongly encouraged to participate in a Candidate Conservation Agreement with Assurances program. Voluntary conservation efforts of this nature are recognized by the State of Oregon as a critical part in recovering the breeding population targeted by Oregon’s Greater Sage-Grouse Conservation Assessment and Strategy for Oregon. Beyond voluntary efforts it remains necessary to provide a regulatory framework that offers fairness, predictability and certainty for all involved parties. Engagement on the part of county government is critical to Oregon’s efforts to address possible impacts from future development.

(2) Exempt activities.

(a) Those activities that do not require governmental approval, including farm use as defined in ORS 215.203(2), are exempt from the provisions of this rule. State agency permits necessary to facilitate a farm use, including granting of new water right permits by the Oregon Water Resources Department (OWRD), are also exempt from the provisions of this rule.

(b) Any energy facility that submitted a preliminary application for site certificate pursuant to ORS 469.300 et seq. on or before the effective date of this rule is exempt from the provisions of this rule. Notwithstanding ORS 197.646(3), this rule shall not be directly applicable to any land use decision regarding that facility unless the applicant chooses otherwise. Similarly, any changes to a local government’s acknowledged comprehensive plan or land use ordinances developed to achieve consistency with this rule shall not constitute “applicable substantive criteria” pursuant to OAR 345-022-0030(3), unless they are in effect on the date the applicant submits a preliminary application for site certificate, unless the applicant chooses otherwise.

(c) Private and other nonfederal lands are strongly encouraged to participate in a Candidate Conservation Agreement with Assurances (CCAA) program. Voluntary conservation efforts of this nature are recognized by the State of Oregon as a critical part in recovering the breeding population targeted by the Greater Sage-Grouse Conservation Assessment and Strategy for Oregon. Uses identified in CCAA agreements are relieved from the provisions of this rule except that conflicting uses identified in section (7) will be subject to sections (9) to (11) in all instances regardless of enrollment status.

(3) Definitions. For purposes of this rule, the definitions in OAR 635-140-0002 and in the glossary of the “Greater Sage-Grouse Conservation Assessment and Strategy for Oregon” adopted by the Oregon Fish and Wildlife Commission on April 22, 2011 (copies of the plan are available through the Oregon Department of Fish and Wildlife (ODFW)) shall apply. In addition, the following definitions shall apply:

(a) “Areas of High Population Richness” means mapped areas of breeding and nesting habitat within core habitat that support the 75th percentile of breeding bird densities (i.e. the top 25 percent). Please see Exhibit A.

(b) “Candidate Conservation Agreement with Assurances” means a formal agreement between the United States Fish and Wildlife Service (USFWS) and one or more parties to address the conservation needs of proposed or candidate species, or species likely to become candidates, before

they become listed as endangered or threatened. Landowners voluntarily commit to conservation actions that will help stabilize or restore the species with the goal that listing under the Federal Endangered Species Act will become unnecessary.

(c) “Core areas” means mapped sagebrush types or other habitats that support sage-grouse annual life history requirements that are encompassed by areas:

(A) Of very high, high, and moderate lek density strata;

(B) Where low lek density strata overlap local connectivity corridors;

or

(C) Where winter habitat use polygons overlap with either low lek density strata, connectivity corridors, or occupied habitat. Core area maps are maintained by ODFW.

(d) “Development action” means any human activity subject to regulation by local, state, or federal agencies that could result in the loss of significant sage-grouse habitat. Development actions may include but are not limited to, construction and operational activities of local, state, and federal agencies. Development actions also include subsequent repermitting of existing activities proposing new impacts beyond current conditions.

(e) “Direct impact” means an adverse effect of a development action upon significant sage-grouse habitat which is proximal to the development action in time and place.

(f) “Disturbance” includes natural threats to sage-grouse habitat such as: wildfire, juniper infestation and the spread of noxious weeds or human activities that can negatively affect sage-grouse use of habitat either through changing the vegetation type or condition, or displacement of sage-grouse use of an area. For purposes of this rule only disturbance from human activities are considered.

(g) “General habitat” means occupied (seasonal or year-round) sage-grouse habitat outside core and low density habitats.

(h) “Indirect impacts” means adverse effects to significant sage-grouse habitat that are caused by or will ultimately result from an affected development activity. Indirect impacts usually occur later in time or are removed in distance compared to direct effects.

(i) “Large-scale development” means uses that are: over 50 feet in height; have a direct impact in excess of five acres; generate more than 50 vehicle trips per day; or create noise levels of at least 70 dB at zero meters for sustained periods of time. Uses that constitute large-scale development also require review by county decision makers and are listed in one of the following categories identified in the table attached to OAR 660-033-0120.

(A) Commercial Uses.

(B) Mineral, Aggregate, Oil and Gas Uses.

(C) Transportation Uses.

(D) Utility/Solid Waste Disposal Facilities.

(E) Parks/Public/Quasi-Public.

(j) “Lek” means an area where male sage-grouse display during the breeding season to attract females (also referred to as strutting-ground).

(k) “Low density areas” means mapped sagebrush types or other habitats that support sage-grouse that are encompassed by areas where:

(A) Low lek density strata overlapped with seasonal connectivity corridors;

(B) Local corridors occur outside of all lek density strata;

(C) Low lek density strata occur outside of connectivity corridors; or

(D) Seasonal connectivity corridors occur outside of all lek density strata. Low density area maps are maintained by ODFW.

(l) “Mitigation hierarchy” means an approach used by decision makers to consider development proposals and is ordinarily comprised of a three step process:

(A) “Avoidance” is the first step in the mitigation hierarchy and is accomplished by not taking a certain development action or parts of that action.

(B) “Minimization” is the second step in the mitigation hierarchy and is accomplished by limiting the degree or magnitude of the development action and its implementation.

(C) “Compensatory mitigation” is the third step in the mitigation hierarchy and means the replacement or enhancement of the function of habitat capable of supporting sage-grouse in greater numbers than predicted to be impacted by a development.

(m) “Occupied Lek” means a lek that has been regularly visited by ODFW and has had one or more male sage-grouse counted in one or more of the last seven years.

(n) “Occupied Pending Lek” means a lek that has not been counted regularly by ODFW in the last seven years, but sage-grouse were present at ODFW’s last visit.

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(o) "Priority Areas for Conservation" (PACs) means key habitats identified by state sage-grouse conservation plans or through other sage-grouse conservation efforts (e.g., BLM Planning). In Oregon, core area habitats are PACs.

(4) Local program development and direct applicability of rule. Local governments may develop a program to achieve consistency with this rule by following the standard process in OAR 660-023-0030, 660-023-0040 and 660-023-0050 and submitting the amendment to the commission in the manner provided for periodic review under ORS 197.628 to 197.650 and OAR 660-025-0175. Until the commission has acknowledged a county amendment to its comprehensive plan and land use regulations to be in compliance with Goal 5 and equivalent to this rule with regard to protecting sage-grouse habitat, sections (5) to (12) shall apply directly to county land use decisions affecting significant sage-grouse habitat. Once the commission has acknowledged a local government program under this section, that program becomes the controlling county land use document and sections (5) to (12) of this rule no longer apply directly.

(5) Quality, Quantity and Location. For purposes of this rule, sage-grouse habitat is only present in Baker, Crook, Deschutes, Harney, Lake, Malheur and Union Counties. The location of sage-grouse habitat within these counties shall be determined by following the map produced by ODFW included as Exhibit B.

(6) Determination of Significance. Significant sage-grouse habitat includes only lands protected under Statewide Planning Goals 3 or 4 as of July 1, 2015 that are identified as:

- (a) Core areas;
- (b) Low density areas; and
- (c) Lands within a general habitat area located within 3.1 miles of an occupied or occupied-pending lek.

(d) The exact location of sage-grouse habitat may be refined during consideration of specific projects but must be done in consultation with ODFW.

(7) Conflicting uses. For purposes of protecting significant sage-grouse habitat, conflicting uses are:

- (a) Large-scale development; and
- (b) Other activities, which require review by county decision makers pursuant to OAR 660-033-0120 table and are proposed:

(A) In a core area within 4.0 miles of an occupied or occupied-pending lek;

(B) In a low density area within 3.1 miles of an occupied or occupied-pending lek; or

(C) In general habitat within 3.1 miles of an occupied or occupied-pending lek.

(8) Pre-Application Conference. A county should convene a pre-application conference prior to accepting an application for a conflicting use in significant sage-grouse habitat. The pre-application conference should include, at a minimum, the applicant, county planning staff and local ODFW staff.

(9) Program to achieve the goal of protecting significant sage grouse habitat in a core area.

(a) A county may consider a large-scale development in a core area upon applying disturbance thresholds and the mitigation hierarchy as follows:

(A) A county may consider a large-scale development that does not cause the one-percent metering threshold described in section (16) or the three-percent disturbance threshold described in section (17) to be exceeded.

(B) Avoidance. Before proceeding with large-scale development activity that impacts a core area, the proponent must demonstrate that reasonable alternatives have been considered and that the activity or other action cannot avoid impacts within core area habitat. If the proposed large-scale development can occur in another location that avoids both direct and indirect impacts within core area habitat, then the proposal must not be allowed unless it can satisfy the following criteria.

(i) It is not technically feasible to locate the proposed large-scale development outside of a core area based on accepted engineering practices, regulatory standards or some combination thereof. Costs associated with technical feasibility may be considered, but cost alone may not be the only consideration in determining that development must be located such that it will have direct or indirect impacts on significant sage-grouse areas; or

(ii) The proposed large-scale development is dependent on a unique geographic or other physical feature(s) that cannot be found on other lands; and

(iii) If either subparagraph (9)(a)(B)(i) or (9)(a)(B)(ii) is found to be satisfied the county must also find that the large-scale development will provide important economic opportunity, needed infrastructure, public safety benefits or public health benefits for local citizens or the entire region.

(C) Minimization. If the proposed use cannot be sited by avoiding a core area altogether, including direct and indirect impacts, it shall be located to minimize the amount of such habitat directly or indirectly disturbed, and to minimize fragmentation of the core area(s) in question by locating the development adjacent to existing development and at the edge of the core area when possible. Uses should minimize impacts through micro-siting, limitations on the timing of construction or use, or both, and methods of construction. Minimizing impacts from large-scale development in core habitat shall also ensure direct and indirect impacts do not occur in known areas of high population richness within a given core area, unless a project proponent demonstrates, by a preponderance of the evidence, that such an approach is not feasible. Costs associated with minimization may be considered, but cost alone may not be the only consideration in determining that location of development cannot further minimize direct or indirect impacts to core areas.

(D) Compensatory Mitigation. To the extent that a proposed large-scale development will have direct or indirect impacts on a core area after application of the avoidance and minimization standards and criteria, above, the permit must be conditioned to fully offset the direct and indirect impacts of the development to any core area. he required compensatory mitigation must comply with OAR chapter 635, division 140.

(b) A county may approve a conflicting use as identified at subsection (7)(b) above upon either:

(A) Receiving confirmation from ODFW that the proposed conflicting use does not pose a threat to significant sage-grouse habitat or the way sage-grouse use that habitat; or

(B) Conditioning the approval based on ODFW recommendations, including minimization techniques and compensatory mitigation, if necessary, to resolve threats to significant sage-grouse habitat.

(10) Program to achieve the goal of protecting significant sage-grouse habitat in a low density area.

(a) A county may approve a large-scale development in a low density area upon applying the mitigation hierarchy as follows:

(A) Avoidance. Before proceeding with large-scale development activity that impacts a low density area, the proponent must demonstrate that reasonable alternatives have been considered and that the activity or other action cannot avoid impacts within a low density area. If the proposed large-scale development can occur in another location that avoids both direct and indirect impacts within a low density area, then the proposal must not be allowed unless it can satisfy the following criteria:

(i) It is not technically or financially feasible to locate the proposed large-scale development outside of a low density area based on accepted engineering practices, regulatory standards, proximity to necessary infrastructure or some combination thereof; or

(ii) The proposed large-scale development is dependent on geographic or other physical feature(s) found in low density habitat areas that are less common at other locations, or it is a linear use that must cross significant sage-grouse habitat in order to achieve a reasonably direct route.

(B) Minimization. If the proposed use cannot be sited by avoiding a low density area altogether, including direct and indirect impacts, it shall be located to minimize the amount of such habitat directly or indirectly disturbed, and to minimize fragmentation of the low density area(s) in question by locating the development adjacent to existing development and at the edge of the low density area when possible. Uses should minimize impacts through micro-siting, limitations on the timing of construction or use, or both, and methods of construction.

(C) Compensatory Mitigation. Required consistent with the provisions of paragraph (9)(a)(D) above.

(b) A county may approve a conflicting use as identified at subsection (7)(b) above when found to be consistent with the provisions of subsection (9)(b).

(11) Program to achieve the goal of protecting significant sage-grouse habitat on general habitat.

(a) A county may approve a large-scale development on significant sage-grouse habitat in general habitat upon requiring:

(A) General Habitat Consultation. Minimizing impacts from development actions in general habitat shall include consultation between the development proponent and ODFW that considers and results in recommendations on how to best locate, construct or operate the development action so as to avoid or minimize direct and indirect impacts on significant

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sage-grouse habitat within the area of general habitat. A county shall attach ODFW recommendations as a condition of approval; and

(B) Compensatory Mitigation. Required consistent with the provisions of paragraph (9)(a)(D) above.

(b) A county may approve a conflicting use identified in subsection (7)(b) above when found to be consistent with the provisions of subsection (9)(b).

(12) Especially Unique Local Economic Opportunity. A county may approve a large-scale development proposal that does not meet the avoidance test for significant sage-grouse habitat if the county determines that the overall public benefits of the proposal outweigh the damage to significant sage-grouse habitat. Requirements for minimization and compensatory mitigation continue to apply and attempts should be made to avoid areas of high population richness, if possible. The county shall make this balancing determination only when the proposal involves an economic opportunity that will provide a number of permanent, full-time jobs, not including construction activities, paying at least 150 percent of average county wages sufficient to increase the amount of total private nonfarm payroll employment by at least 0.5 percent over the figure included in the most recent data available from the Oregon Department of Employment rounded down to the nearest whole number. The applicant has the burden to show that the overall public benefits outweigh the damage to the significant sage-grouse habitat. This provision may be exercised by each effected county once during every ten-year period beginning on the effective date of this rule. A county is also free not to approve a proposal submitted under this section.

(13) A proposal to up-zone lands containing significant sage-grouse habitat to a greater development potential than otherwise allowed under Goals 3 and 4 shall follow the ordinary Goal 5 process at OAR 660-023-0030 to 660-023-0050. Furthermore, up-zoning lands in a core area shall be considered a direct impact and count towards the three percent disturbance threshold pursuant to section (17) below.

(14) Landscape-Level Consideration. The standards in sections (9), (10) and (11) above, are designed to minimize the amount of future impacts from human sources to significant sage-grouse habitat areas. Consistent with available science concerning the relation between human activities and sage-grouse population levels, the department will monitor direct impacts in core areas in each of the PACs shown in Exhibit (C).

(15) Central Registry. The department will work with the counties identified in section (5), ODFW, the Bureau of Land Management (BLM), and USFWS to maintain a central registry, tracking human disturbance from existing (baseline) and all new development affecting core areas. In addition to serving as partners in maintaining the central registry, counties must report all development land use permits for all uses within a core area to the department. The registry will include baseline calculations of direct impact levels consistent with the approach identified by the BLM. The percentage figures included in Exhibit D establish the baseline for human disturbance existing on the effective date of this rule. If better information becomes available, the commission may revise the baseline subject to a rule amendment that is coordinated with the counties identified in section (5) and other interested parties. Counties may establish more refined, project specific data to replace the baseline figures so long as all counties utilize a common methodology. Each year the department shall report to the commission the amount of new direct impacts in each PAC. The report shall be coordinated with and made available to all affected counties.

(16) Metering. This rule is intended to ensure that the area of direct impact levels in any PAC, including energy facilities exempted under subsection (2)(b), does not increase by an amount greater than 1.0 percent of the total area of the PAC in any ten-year period. The initial period shall commence upon the effective date of this rule and continue for ten consecutive years, where upon the process shall be successively repeated. The commission will consider revisions to this rule if the department's yearly reports required by section (15) indicate that the development trends in any PAC indicate that the 1.0 percent direct impact threshold is in jeopardy of being exceeded before the ten-year period has expired. Any proposal to amend this rule undertaken by the department shall be developed in coordination with all affected counties and other stakeholders.

(17) Disturbance Threshold. This rule is intended to ensure that direct impact level, including energy facilities exempted under subsection (2)(b), does not exceed three percent of the total area in any PAC. If this three-percent threshold is approached, then the department must report that situation to the commission along with a proposal to amend this rule to adapt the standards and criteria such that the threshold is not exceeded.

(18) State agency coordination programs. All state agencies that carry out or that permit conflicting uses in core area, low density area, or significant general habitat including but not limited to OWRD, Oregon

Department of Transportation, Department of State Lands, Department of Geology and Mineral Industries, Oregon Department of Energy and the Energy Facility Siting Council, and Department of Environmental Quality must report the proposed development to the department, along with an estimate of the direct impact of the development. In addition, to the extent not regulated by a county, such development, other than the issuance of water rights, the expansion of cultivation, and other farm uses under ORS 215.203(2), must meet the requirements of paragraph (9)(a)(D) of this rule.

(19) Scheduled Review. The department shall commence a review of these rules no later than June 30, 2020 and, if determined to be necessary, recommend revisions to achieve the policy objectives found herein. Furthermore, should the species become listed under the Federal Endangered Species Act, the commission shall consider whether continued application of this rule is necessary. Should the rule remain applicable and the species is de-listed the commission shall consider whether continued application of this rule is necessary.

Stat. Auth.: ORS 197.040

Stats. Implemented: ORS 197.040

Hist.: LCDD 5-2015, f. 8-6-15, cert. ef. 8-13-15; LCDD 4-2016, f. & cert. ef. 2-10-16; LCDD 6-2017, f. & cert. ef. 5-25-17

Landscape Architect Board Chapter 804

Rule Caption: Adopt Board Budget and Fee Rules - 2017-2019 Operating Budget

Adm. Order No.: LAB 2-2017

Filed with Sec. of State: 5-24-2017

Certified to be Effective: 7-1-17

Notice Publication Date: 4-1-2017

Rules Amended: 804-001-0002, 804-040-0000

Subject: Amended the expenditure limit in the budget rule to reflect the Board's adopted 2017-2019 budget. Adjusted select registration and renewal fees in the fee rule in order to increase new revenues as a means to provide sufficient operating revenues for 2017-2019 and to best ensure the continued financial solvency of the Board. The fee increases are the first increases to registration and renewal fees since 2005.

Rules Coordinator: Christine Valentine—(503) 589-0093

804-001-0002

Biennial Budget

Pursuant to the provisions of ORS 182.462, following a public hearing held April 21, 2017, the Board adopts by reference the Oregon State Landscape Architect Board 2017–2019 biennial budget of \$455,523 covering the period July 1, 2017 through June 30, 2019. The Board Administrator, with the approval of the Board, will amend budgeted accounts as necessary, within the approved budget of \$455,523, for the effective operation of the Board. The Board will not exceed the approved budget amount without amending this rule, notifying all registrants, and holding a public hearing. Copies of the budget are available from the Board's office.

Stat. Auth.: ORS 671.415, 182.462 & 670.310

Stats. Implemented: ORS 671.415 & 182.462 804-001-0002

Hist.: LAB 1-1997(Temp), f. & cert. ef. 9-3-97; LAB 1-1998, f. & cert. ef. 2-5-98; LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 2-2005, f. & cert. ef. 5-18-05; LAB 2-2007, f. 5-22-07, cert. ef. 7-1-07; LAB 1-2009, f. 6-15-09, cert. ef. 7-1-09; LAB 1-2011, f. 5-31-11, cert. ef. 7-1-11; LAB 1-2013, f. 6-3-13, cert. ef. 7-1-13; LAB 1-2015, f. 5-22-15, cert. ef. 7-1-15; LAB 2-2017, f. 5-24-17, cert. ef. 7-1-17

804-040-0000

Fees

The following are fees established by the board:

(1) Examination Fees:

(a) Application fee for examination: \$100.

(b) Landscape Architect Registration Examination (LARE): the cost for each section of the LARE is set by the Council of Landscape Architectural Boards (CLARB) and must be paid directly to CLARB.

(2) Registration Fees:

(a) Initial Landscape Architect in Training registration: \$50.00.

(b) Annual renewal for Landscape Architect in Training: \$50.00.

(c) Application fee for initial Landscape Architect registration: \$100.00.

(d) Application fee for Landscape Architect registration by reciprocity: \$100.00.

(e) Initial Landscape Architect registration: \$325.00.

ADMINISTRATIVE RULES

- (f) Annual renewal for Landscape Architect: \$325.00.
- (g) Inactive and Inactive Emeritus Annual fee: \$50.00.
- (3) Business Fees:
 - (a) Application fee for business registration: \$100.00.
 - (b) Initial business registration fee: \$225.00.
 - (c) Annual business registration renewal fee: \$225.00.
 - (d) Initial or revised statement of responsibility filing for an individual Registered Landscape Architect designated as in responsible charge of landscape architectural services: \$50.00.

- (4) Miscellaneous Fees:
 - (a) Late fee: \$100.00 for each delinquent year.
 - (b) Duplicate certificate: \$50.00.
 - (c) Fee for registrant list: \$50.00.

Stat. Auth.: ORS 182.466(4), 670.310, 671.365, 671.415
Stats. Implemented: ORS 671.325, 671.345, 671.365, 671.376
Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1983, f. & ef. 2-1-83; LAB 3-1983(Temp), f. 10-14-83, ef. 11-1-83; LAB 1-1984, f. & ef. 1-5-84; LAB 2-1986, f. & ef. 3-5-86; LAB 1-1987, f. & ef. 1-5-87; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 1-1992, f. 3-23-92, cert. ef. 4-1-92; LAB 1-1993, f. & cert. ef. 7-1-93; LAB 1-1998, f. & cert. ef. 2-5-98; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-1999, f. & cert. ef. 10-22-99; LAB 1-2001(Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05; LAB 2-2005, f. & cert. ef. 5-18-05; LAB 1-2006, f. & cert. ef. 3-17-06; LAB 2-2008, f. & cert. ef. 3-20-08; LAB 2-2009, f. & cert. ef. 12-11-09; LAB 1-2010, f. & cert. ef. 2-17-10; LAB 3-2012(Temp), f. & cert. ef. 9-5-12 thru 3-4-13; LAB 4-2012, f. 11-16-12, cert. ef. 11-21-12; LAB 1-2014, f. & cert. ef. 11-19-14; LAB 2-2015, f. 8-17-15, cert. ef. 9-1-15; LAB 1-2017, f. & cert. ef. 2-10-17; LAB 2-2017, f. 5-24-17, cert. ef. 7-1-17

Landscape Contractors Board Chapter 808

Rule Caption: Adopt 2017-2019 LCB operating budget

Adm. Order No.: LCB 2-2017

Filed with Sec. of State: 5-26-2017

Certified to be Effective: 7-1-17

Notice Publication Date: 3-1-2017

Rules Amended: 808-001-0008

Subject: Adopt 2017-2019 LCB operating budget

Rules Coordinator: Kim Gladwill-Rowley—(503) 967-6291, ext. 223

808-001-0008

Operating Budget

(1) Pursuant to ORS 182.462, the Board adopts the budget, for the biennium beginning July 1, 2015 and ending June 30, 2017, as approved at a Board Meeting held June 18, 2015. The Board Administrator will amend accounts as necessary, within the approved budget amount for the effective operation of the Board. Copies of the budget are available at the Board's office.

(2) The Board amends the July 1, 2015 through June 30, 2017 budget to reflect a total income amount of \$1,244,507 and a total expense of \$1,241,561.16 with a projected net income of \$3,445.84.

(3) Pursuant to ORS 182.462, the Board adopts the budget for the biennium beginning July 1, 2017 and ending June 30, 2019, as approved at a Board meeting held May 19, 2017 to reflect a total income amount of \$1,388,470.00 and a total expense of \$1,448,332.31 with a projected net loss of \$59,862.31. The Board Administrator will amend account as necessary, within the approved budget amount for the effective operation of the Board. Copies of the 2017–2019 budget are available at the Board's office.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 182.462

Hist.: LCB 3-2003, f. 5-27-03, cert. ef. 6-1-03; LCB 3-2005, f. & cert. ef. 6-1-05; LCB 1-2006, f. 3-27-06, cert. ef. 4-1-06; LCB 2-2007, f. & cert. ef. 5-16-07; LCB 4-2009, f. 6-1-09 cert. ef. 7-1-09; LCB 5-2011, f. & cert. ef. 6-17-11; LCB 5-2012, f. & cert. ef. 8-2-12; LCB 3-2013, f. 6-21-13, cert. ef. 7-1-13; LCB 3-2015, f. & cert. ef. 3-24-15; LCB 5-2015, f. & cert. ef. 6-18-15; LCB 8-2016, f. & cert. ef. 8-19-16; LCB 2-2017, f. 5-26-17, cert. ef. 7-1-17

Rule Caption: Amend civil penalty amounts and re-arrange listing of those penalties.

Adm. Order No.: LCB 3-2017

Filed with Sec. of State: 6-7-2017

Certified to be Effective: 7-1-17

Notice Publication Date: 3-1-2017

Rules Amended: 808-005-0020

Subject: Amend civil penalty amounts and re-arrange listing of those penalties.

Rules Coordinator: Kim Gladwill-Rowley—(503) 967-6291, ext. 223

808-005-0020

Schedule of Civil Penalties and Suspensions

The agency assesses civil penalties for violations of ORS 671.510 to 671.760 and OAR chapter 808, some of which may be settled per the terms of a Stipulated Order. These penalties include, but are not limited to:

(1) Operating without a license. Operating in violation of ORS 671.530(1) or (3):

(a) For a first offense:

(i) If the value of the work is \$500 or less; \$500; and

(ii) Of the value of the work is more than \$500; \$1,000

(b) For subsequent offenses occurring after action taken on first offense, \$2,000; or

(c) When a claim or complaint has been filed for damages arising out of that work, \$2,000.

(2) Advertising without a license. Advertising in violation of ORS 671.530(2), (4), or (5):

(a) \$500 for the first offense; and

(b) \$1,000 for subsequent offenses occurring after action taken on first offense.

(3) Contract Requirements:

(a) Performing landscaping work without a written contract in violation of ORS 671.625(2):

(i) \$1,000 for the first offense; and

(ii) \$2,000 for subsequent offenses occurring after action taken on first offense.

(b) Failing to comply with minimum contract standards as required in ORS 671.625(1) and OAR 808-002-0020:

(i) \$500 for the first offense; and

(ii) \$1,000 for subsequent offenses occurring after action taken on first offense.

(4) Advertising Requirements.

(a) Failure to include the license number in all written advertising in violation of OAR 808-003-0010; or

(b) Advertising for landscaping work outside the scope of the landscape contracting business license in violation of OAR 808-003-0040:

(i) \$500 for the first offense; and

(ii) \$1,000 for subsequent offenses occurring after action taken on first offense.

(5) Insurance and Workers Compensation Requirements. Failure to maintain the insurance or workers compensation insurance coverage required by ORS 671.565, OAR 808-003-0095, or 808-003-0620 in effect continuously throughout the license period:

(a) \$500 for the first offense; and

(b) \$1,000 for subsequent offenses occurring after action taken on first offense.

(6) Hiring employees while licensed as an exempt landscape contracting business in violation of ORS 671.525(4):

(a) \$500 for the first offense if the licensee obtained workers' compensation coverage prior to the employee hire date;

(b) \$1,000 for the first offense and suspension of the license until the licensee provides the agency with proof of conformance with the statutes and rules if the licensee did not obtain workers' compensation coverage prior to the employee hire date;

(c) \$1,000 for subsequent offenses occurring after action taken on first offense if the licensee obtained workers' compensation coverage prior to the employee hire date; and

(d) \$2,000 for subsequent offenses occurring after action taken on first offense and suspension of the license until the licensee provides the agency with proof of conformance with the statutes and rules if the licensee did not obtain workers' compensation coverage prior to the employee hire date.

(7) Failure to verify workers' compensation coverage for temporary or leased workers as required in ORS 671.527, 671.562, and OAR 808-003-0620:

(a) \$500 for the first offense and suspension of the license until the licensee provides the agency with proof of conformance with the statutes and rules; and

(b) \$1,000 for subsequent offenses occurring after action taken on first offense and suspension of the license until the licensee provides the agency with proof of conformance with the statutes and rules. For purposes

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es of subsection 17(a) only, if the documentation of verification of workers' compensation coverage is received by the agency on or before the 21st day after the date of the contested case notice and the verification shows coverage of all employees from the employees' hire date, the contested case will be withdrawn without prejudice.

(8) Bond Requirements.

(a) Failure of a landscape contracting business to obtain the correct amount of surety bond or irrevocable letter of credit, as required by ORS 671.690(1):

(i) \$1,000 for the first offense and immediate suspension per ORS 671.610(2) until the proper bond is received in the State Landscape Contractors Board office;

(ii) \$2,000 for the second offense occurring after action taken on the first offense and immediate suspension per ORS 671.610(2) until the proper bond is received in the State Landscape Contractors Board office.

(b) Failure to maintain the bond or other board accepted surety as required by ORS 671.690 and OAR 808-0-03-0610 through 808-003-0617 in effect continuously throughout the license period:

(i) \$500 for the first offense; and

(ii) \$1,000 for subsequent offenses occurring after action taken on first offense.

(9) Failure of a landscape contracting business to:

(a) notify the board of a change in address in writing or on line at the LCB website as required by ORS 671.603:

(i) \$200 for the first offense; and

(ii) \$500 for subsequent offenses occurring after action taken on first offense.

(b) Require the landscape construction professional to directly supervise unlicensed employees of the landscaping business performing landscaping work that is related to the landscape construction professional phase of license:

(i) \$1,200 for the first offense; and

(ii) \$2,000 for subsequent offenses occurring after action taken on first offense.

(iii) \$2,000 and six month suspension of the license for the third offense.

(c) Notify the board of a change in the landscaping business' phase of license as required by OAR 808-003-0125:

(i) \$200 for the first offense; and

(ii) \$500 for subsequent offenses occurring after action taken on first offense.

(d) Notify the LCB of a new business name (including any new assumed business name) or, in the case of a sole proprietor, any personal surname under which the business is conducted, in violation of OAR 808-003-0020:

(a) \$200 for first offense; and

(b) \$500 for subsequent offenses occurring after action taken on first offense.

(10) Failure by the landscape construction professional to:

(a) Notify the Landscape Contractors Board of a change of address or employment in writing or on line at the LCB website as required by ORS 671.603 and OAR 808-003-0125:

(i) \$200 for the first offense; and

(ii) \$500 for subsequent offenses occurring after action taken on first offense.

(b) Comply with the supervisory responsibilities as required by OAR 808-003-0018;

(i) \$1,000 for the first offense;

(ii) \$2,000 for the second offense occurring after action taken on first offense; and

(iii) \$2,000 and six month suspension of the license for the third offense.

(11) Continuing Education Requirements. Failure of a landscape construction professional to:

(a) Respond to the continuing education audit as required under OAR 808-040-0060(3):

(i) For the first offense: Suspension of the license until the CEH documentation is received by the agency. For purposes of subsection 26(a) only, if the CEH documentation as required by OAR 808-040-0060(3) is received by the agency on or before the 21st day after the date of the contested case notice, the contested case will be withdrawn without prejudice.

(ii) For subsequent offenses occurring after action taken on the first offense: Suspension of the license until the CEH documentation is received by the agency.

(b) Submit complete documentation as required under OAR 808-040-0060(3), (4), (5) or (6):

(i) For the first offense: Suspension of the license until the CEH documentation is received by the agency. For purposes of subsection 27(a) only, if the CEH documentation as required by OAR 808-040-0060(3), (4), (5) or (6) is received by the agency on or before the 21st day after the date of the contested case notice, the contested case will be withdrawn without prejudice.

(ii) For subsequent offenses occurring after action taken on the first offense: Suspension of the license until the CEH documentation is received by the agency.

(c) Complete the continuing education hours by the deadline as required under OAR 808-040-0020(1):

(i) \$200 for the first offense; and

(ii) \$500 for subsequent offenses occurring after action taken on the first offense.

(12) Performing work outside the scope of the landscape contracting business license in violation of OAR 808-003-0040:

(a) \$1,000 for the first offense; and

(b) \$2,000 for subsequent offenses occurring after action taken on first offense.

(13) Operating as a landscaping contracting business without having at least one owner or employee who is a licensed landscape construction professional licensed within the phase of work performed, in violation of OAR 808-003-0040 and 808-003-0045:

(a) \$1,000 for the first offense; and

(b) \$2,000 for subsequent offenses occurring after action taken on first offense.

(14) Installation of an irrigation backflow assembly or tapping into the potable water supply in violation of a written agreement with the Board as provided in OAR 808-003-0040, \$1,000 and suspension of the license until Backflow Prevention license is obtained.

(15) Failure to conform to information provided on the application in violation of ORS 671.510 to 671.710:

(a) \$1,000 for the first offense and suspension of the license until the licensee provides the agency with proof of compliance with the statutes and rules; and

(b) \$2,000 for subsequent offenses occurring after action taken on first offense and suspension of the license until the licensee provides the agency with proof of compliance with the statutes and rules.

(16) Failure to comply with any part of ORS Chapters 316, 656, 657, and 671, as authorized by ORS 671.510 to 671.710 or rules promulgated by the agency:

(a) \$1,000 for the first offense and suspension of the license until the licensee provides the agency with proof of conformance with the statutes and rules; and

(b) \$2,000 for subsequent offenses occurring after action taken on first offense and suspension of the license until the licensee provides the agency with proof of conformance with the statutes and rules.

(17) Conduct that is dishonest or fraudulent or that the board finds injurious to the welfare of the public as a landscape construction professional or landscape contracting business as stated in ORS 671.610(1)(q) and defined in OAR 808-002-0330:

(a) \$1,000 for the first offense and suspension of the license; and

(b) \$2,000 for subsequent offenses occurring after action taken on first offense and suspension of the license. The agency may also revoke the license.

(18) Pursuant to ORS 671.610(1)(e) makes misleading statements when advertising services or materials:

(A) \$200; and

(B) Suspension of the license until the advertisement is amended, removed or the licensee no longer uses the misleading advertisement. If advertisement cannot be amended or removed, it is to be corrected upon the next printing, i.e. yellow page ads.

(b) For subsequent offenses occurring after action taken on the first offense:

(A) \$500; and

(B) Suspension of the license until the advertisement is amended, removed or the licensee no longer uses the misleading advertisement. If advertisement cannot be amended or removed, it is to be corrected upon the next printing, i.e. yellow page ads.

(19) Violating an order to stop work in violation of ORS 671.555(5), \$1,000 per day.

(20) Failure to obtain a permit to tap into a potable water supply prior to the installation of an irrigation backflow assembly or failure to comply

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with applicable plumbing code requirements as required by OAR 808-003-0126(3)(a):

- (a) \$500 for the first offense; and
- (b) \$1,000 for subsequent offenses occurring after action taken on first offense.

(21) Failure to obtain the appropriate building code permit(s):

- (a) \$500 for the first offense; and
- (b) \$1,000 for subsequent offenses occurring after action taken on first offense.

(22) When as set forth in ORS 671.610(5), the number of licensed landscape contracting businesses working together on the same task on the same job site, where one of the businesses is licensed exempt under ORS 671.525(2)(b), exceeded two sole proprietors, one partnership, one corporation, or one limited liability company, penalties shall be imposed on each of the persons to whom the contract is awarded and each of the persons who award the contract, as follows:

- (a) \$1,000 for the first offense;
- (b) \$2,000 for the second offense;
- (c) Six months suspension of the license for the third offense; and
- (d) Three-year revocation of license for a fourth offense.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 671.997

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 2-1991(Temp), f. 9-27-91, cert. ef. 9-29-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 4-2003, f. 5-27-03, cert. ef. 6-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 2-2005, f. & cert. ef. 4-5-05; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCCB 3-2007, f. & cert. ef. 8-1-07; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 7-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 3-2008, f. & cert. ef. 4-11-08; LCB 10-2008, f. & cert. ef. 11-6-08; LCB 1-2010, f. & cert. ef. 1-27-10; LCB 3-2010, f. & cert. ef. 6-1-10; LCB 7-2010, f. & cert. ef. 10-25-10; LCB 10-2011, f. 7-26-11, cert. ef. 8-1-11; LCB 13-2011, f. 12-29-11, cert. ef. 1-1-12; LCB 10-2012, f. & cert. ef. 12-4-12; LCB 3-2017, f. 6-7-17, cert. ef. 7-1-17

Oregon Department of Education Chapter 581

Rule Caption: School Construction Matching Program

Adm. Order No.: ODE 7-2017

Filed with Sec. of State: 6-1-2017

Certified to be Effective: 6-1-17

Notice Publication Date: 5-1-2017

Rules Adopted: 581-027-0023

Rules Amended: 581-027-0010, 581-027-0015, 581-027-0020, 581-027-0025, 581-027-0030, 581-027-0035, 581-027-0040, 581-027-0045, 581-027-0050

Subject: Implement statutory requirements to add long-rang facility plans and facility assessments to the Oregon School Capital Improvement Matching Program applications.

Rules Coordinator: Cindy Hunt—(503) 947-5651

581-027-0010

Calculations for Oregon School Capital Improvement Matching Program Priority List

(1) For each Funding Cycle, the Department shall provide State Matching Grants to Districts from designated resources in the Oregon School Capital Improvement Matching Account. The Department shall determine and apportion the amount of available resources among the Funding Cycles in each biennium. The total amount of State Matching Grant funds available and awarded by the Department may vary during each Funding Cycle.

(2) The Department shall post on its website the amounts that will be available for OSCIM Grants for each Funding Cycle within a reasonable time after the Legislature determines the level of funding for the Oregon School Capital Improvement Matching Account.

(3) If the Legislature does not determine the amount of funding for the Oregon School Capital Improvement Matching Account until after the application period opens for a given Funding Cycle, the application period will run as normal. However, any posting of results will be delayed until such time as the Legislature determines the amount of funding for the Oregon School Capital Improvement Matching Account.

(4) If the Legislature does not appropriate any funds for the OSCIM Program for a biennium, or any part of the biennium, then the OSCIM Program will cancel open application periods and future application periods until funding is restored.

(5) Sixty percent (60%) of designated grant resources in the Oregon School Capital Improvement Matching Account shall be awarded based on the Priority List.

(6) The Priority List shall be based on a District's Assessed Value, percentage of Students in Poverty, and Average Daily Membership.

(7) The Department shall update the Priority List every biennium. The Priority List will be updated no later than June 1 before the start of the next biennium. The updated Priority List will be effective at the start of the next biennium. To update the list, the Department will use the data from the most recent year for which all three sources have reported actual data.

(8) The Priority List shall be calculated as follows:

(a) The District's Students in Poverty shall be multiplied by 20 to determine the Weighted Number of Students in Poverty.

(b) The District's Weighted Number of Students in Poverty shall be divided by the District's ADM to arrive at the District's Percentage of Students in Poverty.

(c) The District's Assessed Value shall be divided by the District's ADM to determine the District's Assessed Property Value per ADM.

(d) The District's Assessed Property Value per ADM shall then be divided by 1 plus the Percentage of Students in Poverty to determine the District's Adjusted Assessed Value per ADM.

(e) The Districts will be ranked from the smallest Adjusted Assessed Property Value per ADM to the highest. This ranking will ensure Districts with the highest rate of students in poverty and lowest assessed property wealth per ADM are provided the greatest chance for a State Matching Grant.

Stat. Auth.: Sec. 2 & 5, Ch. 783, OL 2015 (Enrolled SB 447)

Stats. Implemented: Sec. 2, 4 & 5, Ch. 783, OL 2015 (Enrolled SB 447)

Hist.: ODE 30-2016, f. & cert. ef. 4-28-16; ODE 4-2017, f. & cert. ef. 3-1-17; ODE 7-2017, f. & cert. ef. 6-1-17

581-027-0015

Calculations for Oregon School Capital Improvement Matching Program Funding Formula

(1) The Department shall provide State Matching Grants to Districts from available resources in the Oregon School Capital Improvement Matching Account.

(2) Sixty percent (60%) of the available resources in the Oregon School Capital Improvement Matching Account for a biennium shall be awarded based on the Priority List.

(3) Forty percent (40%) of the available resources in the Oregon School Capital Improvement Matching Account for a biennium shall be awarded based on the order in which applications are received during the application period established by the Department for the Funding Cycle.

(4) The Department shall use a funding formula to determine the amount of State Matching Grant funds each District is eligible to receive from the Oregon School Capital Improvement Matching Account. This funding formula will be used to determine eligibility for State Matching Grants awarded through both the Priority List and First in Time application process.

(5) Districts whose voters pass \$4,000,000 or less in Local GO Bonds for District facility projects shall be eligible for a one-to-one match from State Matching Grant funds.

(6) Districts whose voters pass more than \$4,000,000 in Local GO Bonds for District facility projects shall be eligible for at least \$4,000,000 and no more than \$8,000,000 based on the following formula:

(a) The District's Adjusted Assessed Property Value per ADM as determined by OAR 581-027-0010 shall be multiplied by the assumed tax rate of .001 (\$1 per \$1000 of assessed property value) to calculate the District's Estimated Local Bond Revenue per ADM.

(b) The Estimated Local Bond Revenue per ADM shall be subtracted from the Guaranteed Tax Rate Amount to determine the amount of eligible State Matching Grant funds per ADM.

(c) The eligible State Matching Grant funds per ADM shall be multiplied by the District's ADM to determine the maximum amount of State Matching Grant funds for which a District is eligible.

(7) The Department shall use the lesser of total proceeds from the sale of the Local GO Bonds exclusive of underwriter's discount and other costs of issuance or the original amount requested by the District as the final basis for calculating the State Matching Grant. The provisions of subsection (7) apply starting with the November 2016 Funding Cycle.

(8) Local GO Bonds used by a District to qualify for the OSCIM Program must be Closed within six months of the date of the election at which the Local GO Bonds were approved.

Stat. Auth.: Sec. 2 & 5, Ch. 783, OL 2015 (Enrolled SB 447)

Stats. Implemented: Sec. 2, 4 & 5, Ch. 783, OL 2015 (Enrolled SB 447)

ADMINISTRATIVE RULES

Hist.: ODE 30-2016, f. & cert. ef. 4-28-16; ODE 4-2017, f. & cert. ef. 3-1-17; ODE 7-2017, f. & cert. ef. 6-1-17

581-027-0020

Oregon School Capital Improvement Matching Program Application

(1) The Department shall create one application for Districts to apply for State Matching Grants from the Oregon School Capital Improvement Matching Account.

(2) The Department shall post the application prior to the beginning of each Funding Cycle on the Department's web page

(3) The Department shall open applications for each Funding Cycle as follows:

(a) On the July 15 that precedes the first November Funding Cycle in a biennium;

(b) On the September 15 that precedes the first May Funding Cycle in a biennium;

(c) On the March 15 that precedes the second November Funding Cycle in a biennium; and

(d) On the second September 15 that precedes the second May Funding Cycle in a biennium.

(4) If one of those dates falls on a weekend or holiday, then the application period will be opened the Friday preceding.

(5) Applicants must submit their application electronically through secure file transfer protocol. Districts may submit applications only for an open and current Funding Cycle. The Department will not accept applications for later Funding Cycles.

(6) A District may not re-submit in the same Funding Cycle a revised or corrected application after the deadline for submission has passed and the Department has determined the original application was incomplete or otherwise not accepted for a funding commitment.

(7) A District that submits an OSCIM Program application to the Department for one Funding Cycle may not apply for another Funding Cycle until the election for the Funding Cycle in which the district applied occurs, regardless of whether the district chooses to participate in that election.

(8) The Department shall:

(a) Rank complete applications from Districts for each Funding Cycle according to the Priority List formula;

(b) Make funding commitments to Districts with the highest ranking on the priority list until sixty percent (60%) of the available resources for that Funding Cycle are used.

(c) Make funding commitments to the remaining Districts in accordance to the First in Time process for that Funding Cycle and based on the order in which the Department receives applications.

(d) If a district receives a partial commitment in a Funding Cycle, the Department shall not round up that partial commitment by reducing funds available to other Funding Cycles.

(9) In order to promote equity across the state, the Department shall deem all applications received within a specified period of time for each Funding Cycle as being received at the same time.

(a) The Department shall establish the following periods for reception of applications:

(A) 8:00 a.m. to 12:30 p.m. will be the first application period; and

(B) 12:31 p.m. to 5:00 p.m. will be the second application period.

(b) Those applications received within the first time period shall be deemed to be the first in time for purposes of award commitments.

(c) Those applications received in subsequent time periods will be deemed to be received in order of the established time periods.

(d) The Department shall commit First in Time funding to Districts based on which time period the District is deemed to have submitted their application.

(e) If the First in Time funding is insufficient to provide a commitment to all Districts within a given time period for that Funding Cycle, the Department shall randomly select the Districts by a lottery process to determine which Districts will receive an award commitment.

(f) The lottery process shall be determined by the Department.

(g) All lottery results are final.

(10) The Department shall notify Districts that receive a funding commitment from the Oregon School Capital Improvement Matching Account within two weeks of the close of the application period for a Funding Cycle

(11) The Department shall post the eligibility and ranking of all Districts that applied during that Funding Cycle on the Department's website. Districts that applied but did not receive a commitment will be notified of where they fall on the Waiting List.

(12) All funding commitments are contingent upon the District subsequently closing the required Local GO Bonds within 6 months of that Funding Cycle's bond election.

(13) Any Districts on the Waiting List may choose to move forward seeking voter approval for Local GO Bonds in that Funding Cycle with the understanding that State Matching Grant funds may become available for that Funding Cycle if a District that has received a commitment is unsuccessful in passing their Local GO Bonds.

(14) All funding commitments to Districts that successfully pass their Local GO Bonds in the Funding Cycle will be officially awarded a State Matching Grant upon the execution of a grant agreement prescribed by the Department.

(15) All funding commitments to Districts that are not successful in passing their Local GO Bonds will be recommitted to Districts that have successfully passed Local GO Bonds in that election in the following order:

(a) All districts that received a partial commitment that passed a Local GO Bond will receive funding up to the full award.

(b) All Districts on the First in Time Waiting List that passed a Local GO Bond, will receive an award from the uncommitted First in Time funds

(c) All Districts that received an award from the First in Time Waiting List will be removed from the Priority List Waitlist.

(d) All Districts remaining on the Priority List Waiting List that passed a Local GO Bond will receive any funds remaining from Districts that received a commitment but failed to pass a Local GO Bond.

(16) Districts will have to reapply each Funding Cycle to receive a commitment for that Funding Cycle. A district will not be able to carry forward any commitments made in previous Funding Cycles.

(17) All decisions of the Department regarding the completeness of the application or ranking under either the Priority List or First in Time process are final.

(18) Any funding remaining after all awards have been made for a Funding Cycle shall be moved forward to the next Cycle.

(19) After the second November election in a biennium, the Department will take any funds that remain after all commitments and commitments have been made for the biennium and apply those funds to make commitments to those districts on the Waiting List for the final May Funding Cycle.

Stat. Auth.: Sec. 2 & 5, Ch. 783, OL 2015 (Enrolled SB 447)

Stats. Implemented: Sec. 2, 4 & 5, Ch. 783, OL 2015 (Enrolled SB 447)

Hist.: ODE 30-2016, f. & cert. ef. 4-28-16; ODE 4-2017, f. & cert. ef. 3-1-17; ODE 7-2017, f. & cert. ef. 6-1-17

581-027-0023

Submission of Long-Range Facility Plans and Facility Assessment as part of Oregon School Capital Improvement Matching Program Grant Application

(1) In order to qualify for an OSCIM Program matching grant, Districts must submit a Long-Range Facility Plan and Facility Assessment as part of their OSCIM Program application. Failure to submit a Long-Range Facility Plan and Facility Assessment will disqualify the District from participation in the OSCIM Program application for that Funding Cycle.

(2) Districts shall submit their Long-Range Facility Plan and Facility Assessment as follows:

(a) By the preceding July 1 for the first November Funding Cycle in the biennium;

(b) By the preceding September 1 for the first May Funding Cycle in the biennium;

(c) By the preceding March 1 for the second November Funding Cycle in the biennium; or

(d) By the preceding September 1 for the second May Funding Cycle in the biennium.

(3) The Long-Range Facility Plan and Facility Assessment must be submitted electronically to the Department using the Department's Secure File Transfer protocol.

(4) The Department will review all Long-Range Facility Plan and Facility Assessment submissions to ensure compliance with requirements.

(5) If the Department determines a District's submission does not meet the requirements, the Department will notify the District of the deficiencies.

(6) The District will have until the start of the OSCIM Program Funding Cycle to cure any deficiencies in the submission. If a District is unable to cure the deficiencies to the satisfaction of the Department, the District's submission will be rejected and the District will be ineligible to apply for an OSCIM Program matching grant for that Funding Cycle.

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(7) The Long-Range Facility Plan must meet the following requirements:

- (a) Comply with the standards set forth in OAR 581-027-0040; and
- (b) Demonstrate how the new buildings proposed to be built are integrated into the Long-Range Facility Plan.

(8) The Facility Assessment must meet the following requirements:

- (a) Comply with the standards set forth in OAR 581-027-0035;
- (b) Cover buildings that will be including in the OSCIM Program grant application;

(A) A District may include more buildings in the OSCIM Program application than are in the Facility Assessment; and

(c) Cover a District's current buildings even if the District is applying for the OSCIM Program only for the construction of a new building.

(9) Districts are not required to use a Certified Contractor to complete the Long-Range Facility Plan or the Facility Assessment.

(10) A District may use the same Facility Assessment and Long-Range Facility Plan as a basis for an OSCIM Program application for four years from the year in which the plan was completed.

(11) The Department's determination of the adequacy of the Long-Range Facility Plan and Facility Assessment is final.

Stat. Auth.: ORS 286A.801(8)

Stats. Implemented: ORS 286A.801(2)

Hist.: ODE 7-2017, f. & cert. ef. 6-1-17

581-027-0025

Oregon School Capital Improvement Matching Program Grant Restrictions

(1) A District that receives a State Matching Grant will be ineligible for additional State Matching Grant funds for six years from the year in which the District successfully passed their Local GO Bond.

(2) A District may not use State Matching Grant funds to refinance other general obligation bonds issued by the District.

(3) A District must use State Matching Grant funds for capital costs as defined in ORS 286A.796(3).

(4) A District may use State Matching Grant funds to reimburse the District for capital costs incurred by the District prior to the Funding Cycle in which the District was awarded a grant only if:

(a) The Department approves the use of State Matching Grant funds for such purpose; and

(b) The District complies with all requirements of the OSCIM Program.

(c) The Department's approval or disapproval of the use of State Matching Grant funds is final. A District may not submit a revised request for use of funds.

(5) State Matching Grant funds shall be used only to match the proceeds of Local GO Bonds authorized by an election in the same Funding Cycle in which the District applied for State Matching Grant funds.

(6) If there are State Matching Grant funds available for disbursement after all the awards for all the Funding Cycles in a biennium have been made, the Department may award those uncommitted funds by lottery to Districts that have applied for State Matching Grant funds during the biennium and have Local GO Bond proceeds available to use as a basis for a match so long as the Local GO Bonds from which the proceeds are derived were approved by the voters during the biennium.

Stat. Auth.: Sec. 2 & 5, Ch. 783, OL 2015 (Enrolled SB 447)

Stats. Implemented: Sec. 2, 4 & 5, Ch. 783, OL 2015 (Enrolled SB 447)

Hist.: ODE 30-2016, f. & cert. ef. 4-28-16; ODE 4-2017, f. & cert. ef. 3-1-17; ODE 7-2017, f. & cert. ef. 6-1-17

581-027-0030

Technical Assistance Grant Program Procedures

(1) The Department shall open the application period for the Technical Assistance Grant Program on January 15 of each year and close the application period on February 15 of the same year. If either of those dates falls on a weekend or holiday, the previous Friday will be the effective date of the opening or closing respectively.

(2) The Department shall establish a separate application for the Facility Assessment, Long-Range Facility Plan, and Seismic Assessment.

(3) Each District may submit one application for each type of assessment.

(4) All districts are eligible for each type of assessment.

(5) All applications are due by the date established by the Department. No late applications will be accepted.

(6) The Department shall evaluate each completed application by awarding preference points as established by this rule.

(7) An application will receive 1 point for each preference that the application meets.

(8) An application will receive a final score that is the total of the application's points.

(9) Applications will be funded from highest to lowest score.

(10) If there is not enough funding to provide a Technical Assistance Grant to all applications that have equal scores, then the Department shall create a lottery to determine which applications will receive a Technical Assistance Grant.

(11) The preference points for the Facility Assessment are:

(a) District has 25% or more of its ADMr identified as Students in Poverty. The number of Students in Poverty shall be same as used in OAR 581-027-0010;

(b) District has under 2,500 ADMr according to the annual reports for the same school year as used to calculate the Priority List under OAR 581-027-0010;

(c) District has not conducted a Facility Assessment in the last 10 years;

(d) District has not passed a general obligation bond in the last 15 years; and

(e) District's ADMr has changed by 10% or more over the last 5 years based on the latest annual reports submitted to the Department.

(12) The preference points for the Long-Range Facility Plan are:

(a) District has 25% or more of its ADMr identified as Students in Poverty. The number of Students in Poverty shall be same as used in OAR 581-027-0010;

(b) District has under 2,500 ADMr according to the annual reports for the same school year as used to calculate the Priority List under OAR 581-027-0010;

(c) District has not conducted a Long-Range Facility Plan in the last 10 years;

(d) District has not passed a general obligation bond in the last 15 years; and

(e) District's ADMr has changed by 10% or more over the last 5 years based on the latest annual reports submitted to the Department.

(13) The preference points for the Seismic Assessment are:

(a) District has 25% or more of its ADMr identified as Students in Poverty. The number of Students in Poverty shall be same as used in OAR 581-027-0010;

(b) District has under 2,500 ADMr according to the annual reports for the same school year as used to calculate the Priority List under OAR 581-027-0010;

(c) District has not conducted an assessment for an Oregon Infrastructure Finance Authority Seismic Rehabilitation Grant;

(d) District, using DOGAMI RVS data, identifies 50% or more of the buildings it intends to assess as:

(A) Built in 1995 or earlier; and

(B) The building's final type is URM, PC1, PC2, or C1; or has a type of vertical irregularity listed as "soft story."

(C) If the DOGAMI RVS data separates the building into different sub-buildings and any one of those sub-buildings meets the criteria in (i) and (ii), then the whole building will qualify for inclusion in the 50% minimum. Districts who have buildings built before 1995 that are not listed in the RVS data may count those buildings toward the 50% minimum as if the buildings qualified as stated in subsection (d)(A)(i) and (ii);

(e) District's Mapped Spectral Acceleration for 1-second period (S_s) is greater than 0.6 as calculated by the United State Geological Survey and published on the USGS website for the district's central office. District may use a map created by USGS and published on ODE's website as an alternative means to calculation the Mapped Spectral Acceleration.

(14) A District may use an assessment performed before the start of the application period as a basis for an application, during the 2015-17 biennium, for a Technical Assistance Grant so long as:

(a) The District conducts the assessment according to the standards set forth in these rules;

(b) The District signed the contract for the work after July 1, 2015;

(c) The District used a Certified Contractor to conduct the assessment; and

(d) The District provides the Department with an electronic copy of the assessment in the format established by the Department.

(15) For the period of the 2015-17 biennium, the Department will waive requirements 14(c).

(16) Districts are required to use certified assessors to complete the long-range facility plans and facility assessments.

(17) Districts are not required to use certified contractors to complete seismic assessments.

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(18) Each District that submits an application that receives a Technical Assistance Grant will be required to enter into a grant agreement with the Department prior to issuance of funds.

(19) A District must reapply each time a new grant application is announced if a District did not receive a grant in a grant application period.

(20) Each District that receives a Technical Assistance Grant must submit an electronic copy of the finished report in form to be established by the Department.

(21) If a district receives a grant through the Technical Assistance Grant, the district cannot reapply for that specific grant for the next four years.

(22) A District that receives a Facility Assessment grant and, after completing an assessment of all buildings owned by the District, has funds remaining may apply the remaining funds to performing a Long-Range Facility Plan.

(23) A District that receives a Long-Range Facility Planning Grant and, after completing its Long Range Facility Plan, may use the remaining funds to conduct a Facility Assessment.

(24) If a District exercises either option stated in OAR 581-027-0030(22) or (23), that District will be ineligible for either a Long-Range Facility Plan or Facility Assessment Grant for four years.

Stat. Auth.: Sec. 2 and 5, Ch. 783, OL 2015 (Enrolled Senate Bill 447)
Stats. Implemented: Sec. 5, Ch. 783, OL 2015 (Enrolled Senate Bill 447)
Hist.: ODE 41-2016, f. & cert. ef. 7-20-16; ODE 4-2017, f. & cert. ef. 3-1-17; ODE 7-2017, f. & cert. ef. 6-1-17

581-027-0035

Facility Assessment Requirements

(1) Each Facility Assessment shall contain the following information:

(a) Building Information

(A) Name of building;

(B) Building ID Number;

(C) Physical Address;

(D) Gross Square Footage;

(E) Original Construction Date;

(F) Original Construction Type;

(G) Additions:

(i) Construction Date;

(ii) Construction Type;

(iii) Construction Square footage;

(iv) Construction Usage;

(H) Renovations:

(i) Construction Date;

(ii) Construction Type;

(iii) Construction Square footage; and

(iv) Renovation Construction Usage.

(b) Infrastructure Assessment

(A) UNIFORMAT II Assessment: An assessment of each applicable building element as listed in the American Society for Testing and Materials (ASTM) UNIFORMAT II Classification (October 1999) of Building Elements Level 3 that provides the following:

(i) ASTM Number;

(ii) System Name;

(iii) Description of System;

(iv) Number of systems or square footage of system in need of repair or want of replacement;

(v) Level of repair/replacement needed. The percent of the building affected should be noted to assist in cost estimating.

(vi) Notes as to what specifically needs to be done to repair or replace the system.

(B) Additional items

(i) A safety and security analysis of the facility that determines if the facility meets current best practices for providing a safe and secure environment;

(ii) An ADA assessment and listing of deficiencies;

(iii) Assessment of technology infrastructure in the facility including bandwidth, presence of wireless networks, and other means of providing access to information technology;

(iv) Assessment of indoor air quality; and

(v) Presence of harmful substances such as lead or asbestos in the facility based on district reports.

(c) Value Assessment

(A) The current replacement value of the building using cost per square foot standards as determined by the Department and updated annually.

(B) The Facilities Condition Index of the building as calculated by dividing the total estimated construction costs to completely repair the building by the current replacement value of the building.

(2) The Department shall establish a template for Districts and their Certified Contractors to use to collect the information required in (1).

(3) Districts and Certified Contractors shall use the template established by the Department to provide the final report to the Department in electronic format.

Stat. Auth.: Sec. 2 and 5, Ch. 783, OL 2015 (Enrolled Senate Bill 447)
Stats. Implemented: Sec. 5, Ch. 783, OL 2015 (Enrolled Senate Bill 447)
Hist.: ODE 41-2016, f. & cert. ef. 7-20-16; ODE 4-2017, f. & cert. ef. 3-1-17; ODE 7-2017, f. & cert. ef. 6-1-17

581-027-0040

Long-Range Facility Plan Requirements

(1) Each Long Range Facility Plan shall contain the following information:

(a) Population projections by school age group for the next ten years using U.S. Census or Census partner data.

(b) Collaboration with local government planning agencies (city and/or county) that results in:

(A) Identification of suitable school sites if needed; and

(B) Site acquisition schedules and programs.

(c) Evidence of community involvement in determining:

(A) Educational vision of local community; and

(B) Proposals to fund long-range facility needs.

(d) Identification of buildings on historic preservation lists including the National Historic Register, State Historical Preservation Office, and local historic building lists.

(e) Analysis of district's current facilities' ability to meet current national educational adequacy standards:

(A) Identification of facility standards used to meet district educational vision as well as national educational adequacy standards;

(B) Identification of current facility capacity;

(C) Identification of ability of current facility capacity to meet current national educational adequacy standards;

(D) If current facilities are unable to meet current national educational adequacy standards district will then:

(i) Identify deficiencies in current facilities;

(ii) Identify changes needed to bring current facilities up to national educational adequacy standards; and

(iii) Identify potential alternatives to new construction or major renovation of current facilities to meet current national educational adequacy standards;

(E) A description of the plan the district will undertake to change its facility to match the projections and needs for the district for the next ten years.

(2) The Department shall establish a template for Districts and their Certified Contractors to use to collect the information required in OAR 581-027-0040(1).

(3) Districts and Certified Contractors shall use the template established by the Department to provide the final report to the Department in electronic format.

Stat. Auth.: Sec. 2 and 5, Ch. 783, OL 2015 (Enrolled Senate Bill 447)
Stats. Implemented: Sec. 5, Ch. 783, OL 2015 (Enrolled Senate Bill 447)
Hist.: ODE 41-2016, f. & cert. ef. 7-20-16; ODE 4-2017, f. & cert. ef. 3-1-17; ODE 7-2017, f. & cert. ef. 6-1-17

581-027-0045

Seismic Assessment Requirements

(1) Each Seismic Assessment shall contain the following:

(a) Name of building.

(A) Gross square footage of building.

(B) Physical address.

(C) Original construction date.

(D) Original construction type.

(E) Additions:

(i) Construction Date;

(ii) Construction Type;

(iii) Construction Square footage;

(iv) Construction Usage;

(v) Procedures used to determine the building's ability to perform to the Life Safety Standard in ASCE 41-13.

(vi) Evaluation of building using either ASCE 41-13 Tier I or Tier II evaluations methods except the levels of earthquake ground motion will be not less than 75% of BSE-1N design level earthquake per ASCE 41-13 sec-

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tion 2.4.1.2; instead of the 20% in 50 year ground motion used in the ASCE 41-13 standard.

(I) List of deficiencies that need to be corrected to bring building up to the Life Safety Standard listed in ASCE 41-13.

(II) List of schematic rehabilitation tasks to rectify listed deficiencies in accordance with ACSE 41-13 standard.

(III) List of portions of building that pose highest life safety threat and collapse potential of those building portions.

(IV) Cost estimate provided by professional with knowledge about the type of work to be done that includes contingencies built into all budget categories.

(V) Certification of the final assessment provided by registered Structural Engineer licensed in the State of Oregon.

Stat. Auth.: Sec. 2 and 5, Ch. 783, OL 2015 (Enrolled Senate Bill 447)

Stats. Implemented: Sec. 5, Ch. 783, OL 2015 (Enrolled Senate Bill 447)

Hist.: ODE 41-2016, f. & cert. ef. 7-20-16; ODE 4-2017, f. & cert. ef. 3-1-17; ODE 7-2017, f. & cert. ef. 6-1-17

581-027-0050

Contractor Certification Program

(1) The Department shall establish a program whereby entities or individuals can apply to become Certified Contractors for the purposes of the Technical Assistance Grants.

(2) The program shall contain a portion of instruction on the methods to be used by Certified Contractors in performing Facility Assessment and Long-Range Facility Plan work.

(3) The program shall contain a test such that those that pass will become Certified Contractors.

(4) The Department shall post on its website specific information for each time the training program is held.

(5) No entity or individual may become a Certified Contractor unless they complete the training program established by the Department.

Stat. Auth.: ORS 286A.801(8)

Stats. Implemented: ORS 286A.801(2)

Hist.: ODE 41-2016, f. & cert. ef. 7-20-16; ODE 4-2017, f. & cert. ef. 3-1-17; ODE 7-2017, f. & cert. ef. 6-1-17

Rule Caption: Child and Adult Care Food Program Appeals Decisions

Adm. Order No.: ODE 8-2017

Filed with Sec. of State: 6-1-2017

Certified to be Effective: 6-1-17

Notice Publication Date: 5-1-2017

Rules Adopted: 581-051-0120, 581-051-0125

Subject: Federal law prescribes appeal procedures for Department decisions regarding child and adult care food program appeals. This rule authorizes the Department to follow these procedures and the State's Administrative Procedures Act.

Rules Coordinator: Cindy Hunt—(503) 947-5651

581-051-0120

Applicability of Appeals Procedure and Administrative Procedures Act

(1) The appeal procedures required by this rule and OAR 581-051-0125 apply to appeals of Department of Education decisions within the Child and Adult Care Food Program regarding:

(a) A denial of a new or renewing application for participation;

(b) A denial of an application submitted by a sponsoring organization on behalf of a facility;

(c) The proposed termination of an institution's agreement;

(d) A notice of proposed disqualification of a responsible principal or individual;

(e) The suspension of an institution's participation;

(f) A denial of an institution's application for start-up or expansion payments;

(g) A denial of a request for an advance payment;

(h) The recovery of an advance payment in excess of the amount claimed for the relevant period;

(i) A denial of all or a part of an institution's claim for reimbursement;

(j) A decision by the State agency not to forward to FNS an exception request for payment of a late claim, or a request for an upward adjustment to a claim;

(k) A demand for the remittance of an overpayment; and

(l) Any other action of the State agency affecting an institution's participation or its claim for reimbursement.

(2) Except as otherwise specified in this rule or OAR 581-051-0125, appeals of actions identify in subsection (1) of this rule shall be conducted as a contested case hearing under ORS 183.411 to 183.471 and the Attorney General's Model Rules of Procedure under the Administrative Procedure Act in effect on January 1, 2012.

(3)(a) In addition to the appeal procedure described in OAR 581-051-0125, an institution may request a suspension review appeal if the suspension is based upon any of the following:

(A) The information submitted on the application was false;

(B) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the National Disqualified List;

(C) The institution, one of its sponsored facilities, or one of the responsible principals or responsible individuals of the institution or its facilities is ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program; or

(D) The institution, one of its sponsored facilities, or one of the responsible principals or responsible individuals of the institution or its facilities has been convicted for any activity that indicates a lack of business integrity.

(b) If an institution wants a suspension review, it must send a request to the suspension review official within 10 days of receipt of the notice of the proposed suspension. The appeal request should include the reasons the institution disagrees with the suspension. The institution may submit documentation to support its appeal.

(c) The suspension review official shall be designated by the Superintendent of Public Instruction. The review official must be independent and impartial. The review official may be an employee of the Department, but must be independent of the original decision-making process.

(d) The suspension review official shall notify the Department immediately of the institution's request. The Department must provide the suspension review official with the original proposed suspension and any other supporting documentation.

(e) The suspension review official must render a decision within 10 days of the deadline for receiving the institution's documentation opposing the suspension.

Stat. Auth.: ORS 326.051

Stat. Implemented: ORS 326.051; 7 CFR 226.6(k)

Hist.: ODE 8-2017, f. & cert. ef. 6-1-17

581-051-0125

Notice and Appeal Procedure for Agency Decisions regarding Child and Adult Care Food Program

(1)(a) The Oregon Department of Education shall notify the institution's executive director and chairperson of the board of directors, and the responsible principals and responsible individuals (Appellants) in writing of the grounds upon which the Department based its action. The notice must also state the procedures for requesting an appeal of the action.

(b) Notice means a letter sent by certified mail, return receipt (or the equivalent private delivery service), by facsimile, or by email, that describes an action proposed or taken by the Department or FNS with regard to an institution's Program reimbursement or participation.

(c) The notice is considered to be received by the institution or day care home when it is delivered, sent by facsimile, or sent by email. If the notice is undeliverable, it is considered to be received by the institution, responsible principal or responsible individual, or day care home five days after being sent to the addressee's last known mailing address, facsimile number, or email address.

(2) The Department limits the administrative review to a review of written submissions concerning the accuracy of the Department's determination if the application was denied or the Department proposes to terminate the institution's agreement because:

(a) The information submitted on the application was false;

(b) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is on the national disqualified list;

(c) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities is ineligible to participate in any other publicly funded program by reason of violation of the requirements of the program; or

(d) The institution, one of its sponsored facilities, or one of the principals of the institution or its facilities has been convicted for any activity that indicates a lack of business integrity;

(3) A request for appeal must be in writing and may be submitted by responsible principals and responsible individuals. The Department must receive the request for appeal no later than 15 calendar days from the date the Appellant received the notice of Department action. The Department

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will acknowledge the receipt of the request for an appeal within 10 days of receipt of the request.

(4) The Department shall make information upon which the Department based its action available to the Appellant for inspection.

(5) The Appellant may refute the findings in the notice of action either in person or by submitting written documentation to the review official. The review official will not consider written documentation received more than 30 days after the date the Appellant received the notice of action. Submitted documentation must clearly identify the appealed action.

(6) An in-person hearing must be held in addition to, or in lieu of, a review of the written documentation only if the written request for an appeal specifically requests an in-person hearing. Appellants may be represented by legal counsel or another person. Failure to appear at a scheduled hearing constitutes a waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A Department representative must be allowed to attend the hearing to respond to the Appellant's written documentation and testimony and to answer questions from the review official. At least 10 days advance notice must be provided of the time and place of the hearing; the notice will be sent by certified mail, return receipt requested.

(7) The hearing must be held within 45 days of the date of the receipt of the request for appeal, but not before Appellant's written documentation is received in accordance with subsections (5) and (6) of this rule.

(8) The review official shall be designated by the Superintendent of Public Instruction. The review official must be independent and impartial. The review official may be an employee of the Department, but must be independent of the original decision-making process. Appellant may contact the review official directly if they so desire.

(9) The review official's determination will be consistent with Federal and State laws, regulations, policies, and procedures governing the Program, based solely on the information provided by the Department and the Appellant.

(10) The review official must make a determination and inform the Department and Appellant of that determination within 60 days of the Department's receipt of Appellant's written request for an appeal.

(11) The review official's determination is the final administrative determination granted to the Appellant.

(12) The Department's action will remain in effect during the appeal process. However, participating sponsors and sites may continue to operate the Program during an appeal of a termination of agreement; if the appeal results in overturning the Department's action, reimbursement must be paid for qualified meals served during the appeal process. Program operation must cease if the Department's action is based on imminent dangers to the health or welfare of children. If this is the reason for the Department's action, it will be specified in the notice of action.

Stat. Auth.: ORS 326.051

Stat. Implemented: ORS 326.051; 7 CFR 226.6(k)

Hist.: ODE 8-2017, f. & cert. ef. 6-1-17

Oregon Health Authority Chapter 943

Rule Caption: Confidentiality and Inadmissibility of Mediation Communications and Workplace Interpersonal Dispute Mediation Communications

Adm. Order No.: OHA 1-2017

Filed with Sec. of State: 5-17-2017

Certified to be Effective: 5-17-17

Notice Publication Date:

Rules Amended: 943-014-0200, 943-014-0205

Subject: Pursuant to ORS 36.224(4), the Oregon Health Authority is amending these rules to adopt by reference the Confidentiality and Inadmissibility of Mediation Communications in rule, OAR 137-005-0054, adopted by the Attorney General, effective October 27, 2015.

Rules Coordinator: Keely L. West—(503) 945-6292

943-014-0200

Confidentiality and Inadmissibility of Mediation Communications

Pursuant to ORS 36.224(4), amending the Oregon Health Authority rule Confidentiality and Inadmissibility of Mediation Communications 943-014-0200 to adopt by reference the Confidentiality and Inadmissibility of Mediation Communications rule OAR 137-005-0052 adopted by the Attorney General effective as of 10-27-15.

Stat. Authority: ORS 36.224, OL 2015, ch 114 (SB 189)

Stats. Implemented: ORS 36.224, 36.228, 36.230, 36.232, OL 2015, ch 114 (SB 189)

Hist.: OHA 9-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 25-2011, f. 10-31-11, cert. ef. 11-1-11; OHA 1-2017, f. & cert. ef. 5-17-17

943-014-0205

Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications

Pursuant to ORS 36.224(4), adopting the Oregon Health Authority rule Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications 943-014-0205 to adopt by reference the Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation Communications rule OAR 137-005-0054 adopted by the Attorney General effective as of 10-27-15.

Stat. Auth.: ORS 36.224, OL 2015, ch 114 (SB 189)

Stats. Implemented: ORS 36.230(4), OL 2015, ch 114 (SB 189)

Hist.: OHA 9-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; OHA 25-2011, f. 10-31-11, cert. ef. 11-1-11; OHA 1-2017, f. & cert. ef. 5-17-17

Oregon Health Authority, Health Systems Division: Medical Assistance Programs Chapter 410

Rule Caption: Annual Updates; Relative Value Unit (RVU) Weight; Clinical Lab, ASC

Adm. Order No.: DMAP 16-2017(Temp)

Filed with Sec. of State: 5-23-2017

Certified to be Effective: 5-26-17 thru 11-21-17

Notice Publication Date:

Rules Amended: 410-120-1340

Subject: The Health Systems Division (Division) General Rules govern payments for services provided to certain Medicaid eligible clients. The Division needs to amend OAR 410-120-1340 to implement the annual updates by the Centers for Medicare and Medicaid (CMS) Relative Value Unit (RVU) weights for physician services, Clinical Lab and Ambulatory Surgical Centers.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-120-1340

Payment

(1) The Health Systems Division (Division) shall make payment only to the enrolled provider (see OAR 410-120-1260) who actually performs the service or to the provider's enrolled billing provider for covered services rendered to eligible clients.

(2) Division reimbursement for services may be subject to review prior to reimbursement.

(3) The Division that is administering the program under which the billed services or items are provided sets fee-for-service (FFS) payment rates.

(4) The Division uses FFS payment rates in effect on the date of service that are the lesser of:

(a) The amount billed;

(b) The Division maximum allowable amount or;

(c) Reimbursement specified in the individual program provider rules.

(5) The amount billed may not exceed the provider's "usual charge" (see definitions).

(6) The Division's maximum allowable rate setting process uses the following methodology for:

(a) Relative Value Unit (RVU) weight-based rates: For all CPT/HCPCS codes assigned an RVU weight, the 2017 Total RVU weights published in the Federal Register, Vol. 81, November 15, 2016 to be effective for dates of services on or after January 1, 2017:

(A) For professional services not typically performed in a facility, the Non-Facility Total RVU weight;

(B) For professional services typically performed in a facility, the Facility Total RVU weight;

(C) The Division applies the following conversion factors:

(i) \$40.79 for labor and delivery codes (59400-59622);

(ii) \$27.82 for Oregon primary care providers. A current list of primary care CPT, HCPCS, and provider specialty codes is available at <http://www.oregon.gov/oha/healthplan/Pages/providers.aspx>

(iii) \$25.48 for all remaining RVU weight based CPT/HCPCS codes.

(D) Rate calculation: Effective January 1, 2017, the Division shall calculate rates for each RVU weight-based code using statewide Geographic Practice Cost Indices (GPCIs) as follows:

(i) Work RVU) X (Work GPCI of 1) + (Practice Expense RVU) X (Practice GPCI of 0.974) + (Malpractice RVU) X (Malpractice GPCI of 0.746);

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(ii) Sum in paragraph (D)(i) multiplied by the applicable conversion factor in paragraph (C).

(b) Non RVU based rates:

(A) \$20.78 is the base rate for anesthesia service codes 00100-01996. The rate is based on per unit of service;

(B) Clinical lab codes are priced at 70 percent of the 2017 Medicare clinical lab fee schedule;

(C) All approved Ambulatory Surgical Center (ASC) procedures are reimbursed at 80 percent of the 2017 Medicare fee schedule;

(D) Physician administered drugs billed under a HCPCS code are based on Medicare's Average Sale Price (ASP). When no ASP rate is listed, the rate shall be based upon the Wholesale Acquisition Price (WAC) plus 6.25 percent. If no WAC is available, then the rate shall be reimbursed at Acquisition Cost. Pricing information for WAC is provided by First Data Bank. These rates may change periodically based on drug costs;

(E) All procedures used for vision materials and supplies are based on contracted rates that include acquisition cost plus shipping and handling;

(F) Individual provider rules may specify reimbursement rates for particular services or items.

(7) The rates in section (6) are updated periodically and posted on the Authority web site at: <http://www.oregon.gov/oha/healthplan/pages/feeschedule.aspx>.

(8) The Division reimburses inpatient hospital service under the DRG methodology, unless specified otherwise in the Hospital Services program administrative rules (chapter 410, division 125). Reimbursement for services, including claims paid at DRG rates, may not exceed any upper limits established by federal regulation.

(9) The Division reimburses all out-of-state hospital services at Oregon DRG or FFS rates as published in the Hospital Services program rules (chapter 410, division 125) unless the hospital has a contract or service agreement with the Division to provide highly specialized services.

(10) Payment rates for in-home services provided through Department of Human Services (Department) Aging and People with Disabilities (APD) may not exceed the costs of nursing facility services unless the criteria in OAR 411-027-0020 have been met.

(11) The Division sets payment rates for out-of-state institutions and similar facilities such as skilled nursing care facilities and psychiatric and rehabilitative care facilities at a rate that is:

(a) Consistent with similar services provided in the State of Oregon; and

(b) The lesser of the rate paid to the most similar facility licensed in the State of Oregon or the rate paid by the Medical Assistance Programs in that state for that service; or

(c) The rate established by APD for out-of-state nursing facilities.

(12) The Division may not make payment on claims that have been assigned, sold, or otherwise transferred or when the billing provider, billing agent, or billing service receives a percentage of the amount billed or collected or payment authorized. This includes, but is not limited to, transfer to a collection agency or individual who advances money to a provider for accounts receivable.

(13) The Division may not make a separate payment or copayment to a nursing facility or other provider for services included in the nursing facility's all-inclusive rate. The following services are not included in the all-inclusive rate (OAR 411-070-0085) and may be separately reimbursed:

(a) Legend drugs, biologicals and hyperalimentation drugs and supplies, and enteral nutritional formula as addressed in the Pharmaceutical Services program administrative rules (chapter 410, division 121) and Home Enteral/Parenteral Nutrition and IV Services program administrative rules (chapter 410, division 148);

(b) Physical therapy, speech therapy, and occupational therapy provided by a non-employee of the nursing facility within the appropriate program administrative rules (chapter 410, division 129 and 131);

(c) Continuous oxygen that exceeds 1,000 liters per day by lease of a concentrator or concentrators as addressed in the Durable Medical Equipment, Prosthetics, Orthotics and Supplies program administrative rules (chapter 410, division 122);

(d) Influenza immunization serum as described in the Pharmaceutical Services program administrative rules (chapter 410, division 121);

(e) Podiatry services provided under the rules in the Medical-Surgical Services program administrative rules (chapter 410, division 130);

(f) Medical services provided by a physician or other provider of medical services, such as radiology and laboratory, as outlined in the Medical-Surgical Services program rules (chapter 410, division 130);

(g) Certain custom fitted or specialized equipment as specified in the Durable Medical Equipment, Prosthetics, Orthotics and Supplies program administrative rules (chapter 410, division 122).

(14) The Division reimburses hospice services based on CMS Core-Based Statistical Areas (CBSA's). A separate payment may not be made for services included in the core package of services as outlined in chapter 410, division 142.

(15) For payment for Division clients with Medicare and full Medicaid:

(a) The Division limits payment to the Medicaid allowed amount, less the Medicare payment, up to the Medicare co-insurance and deductible, whichever is less. The Division's payment may not exceed the co-insurance and deductible amounts due;

(b) The Division pays the allowable rate for covered services that are not covered by Medicare.

(16) For clients with third-party resources (TPR), the Division pays the allowed rate less the TPR payment but not to exceed the billed amount.

(17) The Division payments including contracted PHP or CCO payments, unless in error, constitute payment in full, except in limited instances involving allowable spend-down or copayments. For the Division, payment in full includes:

(a) Zero payments for claims when a third party or other resource has paid an amount equivalent to or exceeding Division allowable payment; and

(b) Denials of payment for failure to submit a claim in a timely manner, failure to obtain payment authorization in a timely and appropriate manner, or failure to follow other required procedures identified in the individual provider rules.

(18) Payment by the Division does not restrict or limit the Authority or any state or federal oversight entity's right to review or audit a claim before or after the payment. Claim payment may be denied or subject to recovery if medical review, audit, or other post-payment review determines the service was not provided in accordance with applicable rules or does not meet the criteria for quality of care or medical appropriateness of the care or payment.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025, 414.033, 414.065, 414.095, 414.727, 414.728, 414.742 & 414.743

Hist.: PWC 683, f. 7-19-74, ef. 8-11-78; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76; Renumbered from 461-013-0061, PWC 833, f. 3-18-77, ef. 4-1-77; Renumbered from 461-013-0061; AFS 5-1981, f. 1-23-81, ef. 3-1-81; Renumbered from 461-013-0060, AFS 47-1982, f. 4-30-82, ef. 5-1-82; AFS 52-1982, f. 5-28-82, ef. 6-30-82; AFS 117-1982, f. 12-30-82, ef. 1-1-83; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 50-1985, f. 8-16-85, ef. 9-1-85; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0081, 461-013-0085, 461-013-0175 & 461-013-0180; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0040, 410-120-0220, 410-120-0200, 410-120-0240 & 410-120-0320; HR 2-1994, f. & cert. ef. 2-1-94; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 62-2003, f. 9-8-03, cert. ef. 10-1-03; OMAP 10-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 45-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 35-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 38-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 39-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 22-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 1-25-12; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 28-2012, f. 6-21-12, cert. ef. 7-1-12; DMAP 41-2012(Temp), f. 8-22-12, cert. ef. 9-1-12 thru 2-28-13; DMAP 49-2012, f. 10-31-12, cert. ef. 11-1-12; DMAP 14-2013(Temp), f. & cert. ef. 3-29-13 thru 9-25-13; DMAP 49-2013, f. & cert. ef. 9-25-13; DMAP 71-2013, f. & cert. ef. 12-27-13; DMAP 24-2014, f. & cert. ef. 4-4-14; DMAP 83-2014(Temp), f. 12-23-14, cert. ef. 1-1-15 thru 6-29-15; DMAP 11-2015, f. & cert. ef. 3-4-15; DMAP 86-2015(Temp), f. 12-24-15, cert. ef. 1-1-16 thru 6-28-16; DMAP 9-2016, f. 2-24-16, cert. ef. 3-1-16; DMAP 16-2017(Temp), f. 5-23-17, cert. ef. 5-26-17 thru 11-21-17

Rule Caption: Revise Payment Methodology to Require a Four Visit Minimum for the Doula Services Global Rate

Adm. Order No.: DMAP 17-2017(Temp)

Filed with Sec. of State: 5-24-2017

Certified to be Effective: 5-25-17 thru 10-27-17

Notice Publication Date:

Rules Amended: 410-130-0015

Subject: This OAR specifies that doula services are a covered benefit for all OHP beneficiaries who are pregnant. It defines the FFS payment methodology. This amendment revises the payment method to allow for a global rate to pay for a package that includes at least four doula care visits plus services on the day of delivery. It also specifies that the FFS rate for the global package will be \$350 and clarifies that CCOs must cover this benefit but that they have flexibility to develop rates under the OARs that govern CCO payment to their providers.

Rules Coordinator: Sandy Cafourek — (503) 945-6430

ADMINISTRATIVE RULES

410-130-0015

Doula Services

(1) The primary purpose of providing doula services with the services of a licensed obstetrical practitioner is to optimize birth outcomes, including reduced Caesarian sections, epidural use, reduced assisted vaginal deliveries, and reduce the number of neonatal care unit admissions. These face-to-face services are provided during the prenatal, labor and delivery, and postpartum phases of the client's pregnancy. The following are expected to benefit most from doula services:

(a) A woman with a racially or ethnically diverse background including, Black/African American, Asian, Pacific Islander, Native American, Latino, or multiracial;

(b) A homeless woman;

(c) A woman who speaks limited to no English;

(d) A woman who has limited to no family or partner support; or

(e) A woman who is under the age of 21.

(2) Doula services may be provided only at the request of the licensed obstetrical practitioner. The doula and licensed obstetrical practitioner shall coordinate care and shall work concurrently during the delivery phase of the pregnancy. The licensed obstetrical practitioner shall be a physician or advance practice nurse.

(3) Doulas shall be certified and registered with the Authority pursuant to OAR 410-180-0325 through 0327. Certification shall be effective at the time doula services are provided. Doulas shall provide proof of certification to the practitioner.

(4) Doula services are covered for any woman whose benefit package covers labor and delivery.

(5) The provision of doula services shall be documented in the client's medical record by the licensed obstetrical practitioner.

(6) Payment for doula's services:

(a) For a member enrolled in FFS medical programs:

(A) The licensed obstetrical practitioner may be eligible for an additional payment as remuneration for the attending doula providing the doula services;

(B) Doulas may not receive direct payment from the Division;

(C) To be considered for the additional payment, the professional claim shall include the unique Medicaid modifier of U9 appended to the appropriate obstetrical code;

(D) Generally doula care should be billed as a global doula package. A global package shall include at a minimum two prenatal home visits, care during the labor and delivery phase, and two postpartum home visits;

(E) Itemized billing, i.e., billing the day-of-delivery separate from the home visits, is allowed in extenuating circumstances such as when the primary doula is not able to attend the delivery and a backup doula provides services;

(F) Bill for doula services as follows;

(i) For a global doula package, bill one time using CPT 59400+U9, 59510+U9, 59610+U9 or 59618+U9;

(ii) For itemized billing use CPT 59899+U9 for each home visit, up to four, and one delivery-only code + U9 for the day-of-delivery. Acceptable day-of-delivery-only codes are: 59409+U9, 59514+U9, 59612+U9, or 59620+U9.

(iii) Bill only one global doula package per pregnancy. Do not bill a global doula package with any of the itemized doula services codes for the same pregnancy.

(G) Doula services may only be billed once per pregnancy. Multiples (i.e., twins, triplets) are not eligible for additional payment;

(H) Only providers with a provider type designation of 34, 42, or 09 may be the billing provider for doula services;

(I) Only an enrolled doula, provider type designation 13/600, may be the rendering provider for doula services;

(J) Effective May 1, 2017, the FFS rate for the global doula package will be \$350, the itemized day-of-delivery will be \$150, and the itemized home visits will be \$50 each.

(b) For a member enrolled in CCO medical programs, payment shall be according to OARs governing CCO provider payment.

Stat. Authority: ORS 413.042, 414.065

Stat. Implemented: ORS 414.065

Hist.: DMAP 73-2013, f. 12-31-13, cert. ef. 1-1-14; DMAP 13-2017(Temp), f. 4-28-17, cert. ef. 5-1-17 thru 10-27-17; DMAP 17-2017(Temp), f. 5-24-17, cert. ef. 5-25-17 thru 10-27-17

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Rule Caption: Update Rules Governing Payment for the Medicaid EHR Incentive Program

Adm. Order No.: DMAP 18-2017

Filed with Sec. of State: 5-31-2017

Certified to be Effective: 6-2-17

Notice Publication Date: 5-1-2017

Rules Amended: 410-165-0000, 410-165-0020, 410-165-0040, 410-165-0060, 410-165-0080

Rules Repealed: 410-165-0000(T), 410-165-0020(T), 410-165-0060(T), 410-165-0080(T)

Subject: The Division needs to amend these rules as new federal legislation from the Centers for Medicare and Medicaid Services (CMS) and updates to Oregon's Medicaid State Plan Amendment affects how providers are eligible for the Medicaid EHR Incentive Program. These rules include changes for a shortened 90-day EHR reporting period in 2016-2017, updated 2017 grace period, and new attestation requirements for meaningful use regarding information blocking and surveillance of Certified EHR Technology. The program is also adding pediatric optometrists to the program eligible professional types.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-165-0000

Basis and Purpose

(1) These rules (OAR chapter 410, division 165) govern the Oregon Health Authority (Authority), Health Systems Division, (Division), Medicaid Electronic Health Record (EHR) Incentive Program. The Medicaid EHR Incentive Program provides incentive payments consistent with federal law concerning such payments to eligible providers participating in the Medicaid program who adopt, implement, upgrade, or successfully demonstrate meaningful use of certified EHR technology and who are qualified by the program.

(2) The Medicaid EHR Incentive Program is implemented pursuant to:

(a) The American Reinvestment and Recovery Act of 2009, Pub. L. No. 111-5, section 4201;

(b) The Centers for Medicare and Medicaid Services (CMS) federal regulation 42 CFR Part 495 (2010, 2012, 2014, and 2015) pursuant to the Social Security Act sections 1903(a)(3)(F) and 1903(t);

(c) The Division's General Rules program, OAR chapter 410, division 120;

(d) The Authority's Provider Rules, OAR chapter 943, division 120.

(3) The following retroactive effective dates apply to these rules:

(a) For all sections in these rules that refer to pediatric optometrists, the effective date is July 1, 2016;

(b) For rule 410-165-0080 that refers to CMS federal regulation 42 CFR Part 495 (2016), the effective date is January 1, 2017;

(c) For all sections in these rules that refer to naturopathic physicians, the effective date is May 2, 2017;

(d) For eligible hospitals, except for sections and references in these rules applicable under section (3)(a) or (b) above, the effective date is October 1, 2013, which is also the start date for program year 2014;

(e) For eligible professionals, except for sections and references in these rules applicable under section (3)(a) or (b) above, the effective date is January 1, 2014, which is also the start date for program year 2014.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042 & 414.033

Hist.: DMAP 13-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 20-2013(Temp), f. & cert. ef. 4-26-13 thru 10-23-13; DMAP 56-2013, f. & cert. ef. 10-22-13; DMAP 2-2015(Temp), f. 1-30-15, cert. ef. 2-3-15 thru 8-1-15; DMAP 20-2015, f. & cert. ef. 4-8-15; DMAP 21-2016(Temp), f. 5-11-16, cert. ef. 5-13-16 thru 11-8-16; DMAP 47-2016, f. 7-18-16, cert. ef. 8-1-16; DMAP 3-2017(Temp), f. & cert. ef. 2-2-17 thru 7-31-17; DMAP 18-2017, f. 5-31-17, cert. ef. 6-2-17

410-165-0020

Definitions

The following definitions apply to OAR 410-165-0010 through 410-165-0140:

(1) "Acceptance Documents" means written evidence supplied by a provider demonstrating that the provider met Medicaid EHR Incentive Program eligibility criteria or participation requirements according to standards specified by the Division.

(2) "Acute Care Hospital" means a healthcare facility including, but not limited to, a critical access hospital with a Centers for Medicare and Medicaid Services' (CMS) certification number (CCN) that ends in 0001-0879 or 1300-1399 and where the average length of patient stay is 25 days or fewer.

(3) "Adopt, Implement, or Upgrade" means:

(a) Acquire, purchase, or secure access to certified EHR technology capable of meeting meaningful use requirements;

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(b) Install or commence utilization of certified EHR technology capable of meeting meaningful use requirements; or

(c) Expand the available functionality of certified EHR technology capable of meeting meaningful use requirements at the practice site, including staffing, maintenance, and training or upgrade from existing EHR technology to certified EHR technology.

(4) "Attestation" means a statement that:

(a) Is made by an eligible provider or preparer during the application process;

(b) Represents that the eligible provider met the thresholds and requirements of the Medicaid EHR Incentive Program; and

(c) Is made under penalty of prosecution for falsification or concealment of a material fact.

(5) "Certified EHR Technology" has the meaning given that term in 42 CFR 495.302 (2010, 2012, and 2014), 42 CFR 495.4 (2010, 2012, and 2015), 42 CFR 495.6 (2014), 42 CFR 495.20 (2015), and 45 CFR 170.102 (2010, 2011, 2012, 2014, and 2015).

(6) "Children's Hospital" means a separately certified hospital, either freestanding or a hospital within a hospital that predominantly treats individuals under 21 years of age and that:

(a) Has a CCN that ends in 3300-3399; or

(b) Does not have a CCN but has been provided an alternative number by CMS for purposes of enrollment in the Medicaid EHR Incentive Program as a children's hospital.

(7) "Dentist" has the meaning given that term in OAR 410-120-0000 and 42 CFR 440.100.

(8) "Eligible Hospital" means an acute care hospital with at least 10 percent Medicaid patient volume or a children's hospital.

(9) "Eligible Professional" means a professional who:

(a) Is a physician, dentist, nurse practitioner, nurse-midwife nurse practitioner, pediatric optometrist, naturopathic physician, or physician assistant practicing in a Federally Qualified Health Center (FQHC) or a Rural Health Clinic (RHC) that is so led by a physician assistant;

(b) Meets patient volume requirements described in OAR 410-165-0060; and

(c) Is not a hospital-based professional.

(10) "Eligible Provider" means an eligible hospital or eligible professional.

(11) "Encounter" means:

(a) For an eligible hospital:

(A) Services rendered to an individual for inpatient discharge; or

(B) Services rendered to an individual in an emergency department on any one day.

(b) For an eligible professional, services rendered to an individual on any one day.

(12) "Enrolled Provider" means a hospital or health care practitioner who is actively registered with the Authority pursuant to OAR 943-120-0320.

(13) "Entity Promoting the Adoption of Certified EHR Technology" means an entity designated by the Authority that promotes the adoption of certified EHR technology by enabling:

(a) Oversight of the business and operational and legal issues involved in the adoption and implementation of certified EHR technology; or

(b) The exchange and use of electronic clinical and administrative data between participating providers in a secure manner including, but not limited to, maintaining the physical and organizational relationship integral to the adoption of certified EHR technology by eligible providers.

(14) "Federal Fiscal Year (FFY)" means October 1 to September 30.

(15) "Federally Qualified Health Center (FQHC)" has the meaning given that term in OAR 410-120-0000.

(16) "Grace Period" means a period of time or specified date following the end of a program year when an eligible provider may submit an application to the Medicaid EHR Incentive Program for that program year.

(17) "Hospital-based Professional" means a professional who furnishes 90 percent or more of Medicaid-covered services in a hospital emergency room (place of service code 23) or inpatient hospital (place of service code 21) in the calendar year (CY) preceding the program year, but does not include a professional practicing predominantly at a FQHC or RHC.

(18) "Individuals Receiving Medicaid" means individuals served by an eligible provider where the services rendered would qualify under the Medicaid encounter definition.

(19) "Meaningful EHR User" means an eligible provider that meets the criteria set forth in OAR 410-165-0080.

(20) "Medicaid Encounter" means:

(a) For an eligible hospital applying for program year 2011 or 2012:

(A) Services rendered to an individual per inpatient discharge where Medicaid (or a Medicaid demonstration project approved under the Social Security Act section 1115) paid for part or all of the service; or Medicaid (or a Medicaid demonstration project approved under the Social Security Act section 1115) paid all or part of the individual's premiums, copayments, or cost-sharing; or

(B) Services rendered in an emergency department on any one day where Medicaid (or a Medicaid demonstration project approved under the Social Security Act section 1115) paid for part or all of the service; or Medicaid (or a Medicaid demonstration project approved under the Social Security Act section 1115) paid all or part of the individual's premiums, copayments, and cost-sharing.

(b) For an eligible hospital applying for program year 2013 or later, either:

(A) Services rendered to an individual per inpatient discharge where the individual was enrolled in Medicaid (or a Medicaid demonstration project approved under the Social Security Act section 1115) or Children's Health Insurance Program (CHIP) if part of a state's Medicaid expansion (does not apply to Oregon's as it is designated as a separate CHIP state) at the time the billable service was provided; or

(B) Services rendered in an emergency department on any one day where the individual was enrolled in Medicaid (or a Medicaid demonstration project approved under the Social Security Act section 1115) or Children's Health Insurance Program (CHIP) if part of a state's Medicaid expansion (does not apply to Oregon's as it is designated as a separate CHIP state) at the time the billable service was provided.

(c) For an eligible professional applying for program year 2011 or 2012, either:

(A) Services rendered to an individual on any one day where Medicaid (or a Medicaid demonstration project approved under the Social Security Act section 1115) paid for part or all of the service; or

(B) Medicaid (or a Medicaid demonstration project approved under the Social Security Act section 1115) paid all or part of the individual's premiums, copayments, and cost-sharing.

(d) For an eligible professional applying for program year 2013 or later, services rendered to an individual on any one day where the individual was enrolled in a Medicaid program (or a Medicaid demonstration project approved under the Social Security Act section 1115) or Children's Health Insurance Program (CHIP) if part of a state's Medicaid expansion (does not apply to Oregon's as it is designated as a separate CHIP state) at the time the billable service was provided.

(21) "National Provider Identifier" has the meaning given that term in 45 CFR Part 160 and OAR 410-120-0000.

(22) "Naturopathic Physician" has the meaning given that term in OAR 410-120-0000 and ORS Chapter 685.

(23) "Needy Individual" means individuals served by an eligible professional where the services rendered qualify under the needy individual encounter definition.

(24) "Needy Individual Encounter" means:

(a) For an eligible professional applying for program year 2011 or 2012, services rendered to an individual on any one day where:

(A) Medicaid or CHIP or a Medicaid or CHIP demonstration project approved under the Social Security Act section 1115 paid for part or all of the service;

(B) Medicaid or CHIP or a Medicaid or CHIP demonstration project approved under the Social Security Act section 1115 paid all or part of the individual's premiums, copayments, or cost-sharing;

(C) The services were furnished at no cost and calculated consistent with 42 CFR 495.310(h) (2010); or

(D) The services were paid for at a reduced cost based on a sliding scale determined by the individual's ability to pay.

(b) For an eligible professional applying for program year 2013 or later, services rendered to an individual on any one day where:

(A) The services were rendered to an individual enrolled in a Medicaid program or a Medicaid demonstration project approved under the Social Security Act section 1115 or CHIP at the time the billable service was provided;

(B) The services were furnished at no cost and calculated consistently with 42 CFR 495.310(h) (2010); or

(C) The services were paid for at a reduced cost based on a sliding scale determined by the individual's ability to pay.

(25) "Nurse Practitioner" has the meaning given that term in OAR 410-120-0000 and 42 CFR 440.166.

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(26) "Optometrist" has the meaning given that term in OAR 410-120-0000 and ORS chapter 683.

(27) "Panel" means a managed care panel, medical or health home program panel, or similar provider structure with capitation or case assignment that assigns patients to providers.

(28) "Patient Volume" means:

(a) For eligible hospitals, the proportion of Medicaid encounters to total encounters expressed as a percentage;

(b) For eligible professionals who do not meet the definition of "practices predominantly," the proportion of Medicaid encounters to total encounters expressed as a percentage;

(c) For eligible professionals who meet the definition of "practices predominantly," the proportion of needy individual encounters to total encounters expressed as a percentage.

(29) "Pediatric Optometrist" means an optometrist who predominantly treats individuals under the age of 21.

(30) "Pediatrician" means a physician who predominantly treats individuals under the age of 21.

(31) "Physician" has the meaning given that term in OAR 410-120-0000 and 42 CFR 440.50.

(32) "Physician Assistant" has the meaning given that term in OAR 410-120-0000 and 42 CFR 440.60.

(33) "Practices Predominantly" means an eligibility criterion to permit use of needy individual patient volume. An eligible professional practices predominantly if:

(a) For program year 2011 or 2012, more than 50 percent of an eligible professional's total patient encounters over a period of six months in the calendar year preceding the program year occur at an FQHC or RHC;

(b) For program year 2013 and later, more than 50 percent of an eligible professional's total patient encounters occur at an FQHC or RHC:

(A) During a six-month period in the calendar year preceding the program year; or

(B) During a six-month period in the most recent 12 months prior to attestation.

(34) "Preparer" means an individual authorized by an eligible provider to act on behalf of the provider to complete an application for a Medicaid EHR incentive via an electronic media connection with the Authority.

(35) "Program" means the Medicaid EHR Incentive Program.

(36) "Program Year" means:

(a) The CY for an eligible professional;

(b) For an eligible hospital:

(A) The federal fiscal year for program years 2011 through 2014 and for program 2015 if the attestation date is before December 15, 2015;

(B) The CY for program year 2015 and later if the attestation date is on or after December 15, 2015.

(37) "Provider Web Portal" means the Authority's website that provides a secure gateway for eligible providers or preparers to apply for the Program.

(38) "Qualify" means to meet the eligibility criteria and participation requirements to receive a payment for the program year. The Program makes the determination as to whether an eligible provider qualifies.

(39) "Rural Health Clinic (RHC)" means a clinic located in a rural and medically underserved community designated as an RHC by CMS. Payment by Medicare and Medicaid to an RHC is on a cost-related basis for outpatient physician and certain non-physician services.

(40) "So Led" means when an FQHC or RHC has a physician assistant who is:

(a) The primary provider in the clinic;

(b) A clinical or medical director at the clinical site of practice; or

(c) An owner of the RHC.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042 & 414.033

Hist.: DMAP 13-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 20-2013(Temp), f. & cert. ef. 4-26-13 thru 10-23-13; DMAP 56-2013, f. & cert. ef. 10-22-13; DMAP 2-2015(Temp), f. 1-30-15, cert. ef. 2-3-15 thru 8-1-15; DMAP 20-2015, f. & cert. ef. 4-8-15; DMAP 21-2016(Temp), f. 5-11-16, cert. ef. 5-13-16 thru 11-8-16; DMAP 47-2016, f. 7-18-16, cert. ef. 8-1-16; DMAP 3-2017(Temp), f. & cert. ef. 2-2-17 thru 7-31-17; DMAP 18-2017, f. 5-31-17, cert. ef. 6-2-17

410-165-0040

Application

(1) An eligible provider shall apply to the program each program year that the eligible provider seeks an incentive payment. To apply, an eligible provider or preparer shall:

(a) Register with CMS;

(b) After registering with CMS, apply to the program within the grace period for each program year:

(A) For program years 2011 and 2012, the following applies:

(i) For a first year application, the grace period is 60 days;

(ii) For all subsequent years, the grace period is 90 days.

(B) For program year 2013, the grace period is 90 days;

(C) For program year 2014, the following applies:

(i) For eligible hospitals, the grace period ends on January 31, 2015;

(ii) For eligible professionals, the grace period ends on May 31, 2015.

(D) For program year 2015, the following applies:

(i) For eligible providers who are attesting for adopt, implement, or upgrade defined in section (3), the grace period ends on March 31, 2016;

(ii) For eligible hospitals that are attesting for meaningful use through CMS for the Medicare EHR Incentive Program and for the Medicaid EHR Incentive Program, the grace period ends on March 31, 2016;

(iii) For eligible professionals who are attesting for meaningful use described in OAR 410-165-0080, the grace period ends on August 31, 2016;

(iv) For eligible hospitals that are children's hospitals defined in OAR 410-165-0020 that are attesting for meaningful use described in OAR 410-165-0080 through the Medicaid EHR Program, the grace period ends on December 31, 2016.

(E) For program year 2016, the following applies:

(i) For eligible hospitals, the grace period ends on March 31, 2017;

(ii) For eligible professionals that are not naturopathic physicians, the grace period ends on May 31, 2017;

(iii) For naturopathic physicians, the grace period ends on July 31, 2017.

(F) For program year 2017 and later, the grace period is 90 days.

(c) Attest that:

(A) The information submitted is true, accurate, and complete; and

(B) They understand that any falsification or concealment of a material fact may be prosecuted under federal and state laws.

(d) Maintain for a minimum of seven years from the date of completed application complete, accurate, and unaltered copies of all acceptance documents associated with all data transmissions and attestations. The information maintained shall include at a minimum documentation to support:

(A) The financial or legal obligation for the adoption, implementation, or upgrade of certified EHR technology including, but not limited to, the purchase agreement or contract;

(B) Demonstration of meaningful use for the year corresponding to the program year;

(C) Patient volume for the year corresponding to the program year; and

(D) The eligible hospital's payment calculation data including, but not limited to, Medicare cost reports.

(2) An eligible provider shall submit the acceptance documents referred to in section (1)(d)(A) when the eligible provider is attesting for a payment for the adoption, implementation, or upgrade to certified EHR technology or when new certified EHR technology is acquired. If the eligible provider is an eligible hospital seeking its first year payment, it shall submit the acceptance documents referred to in section (1)(d)(D).

(3) The Program reviews the completed application and the acceptance documents to determine if the eligible provider qualifies for an incentive payment:

(a) The Program shall verify the information in the application;

(b) The Program shall determine if the eligible provider's information complies with the eligibility criteria and participation requirements;

(c) The Program shall notify the eligible provider about the incentive payment determination;

(d) The Authority may reduce the incentive payment to pay off debt if an eligible provider or incentive payment recipient owes a debt under a collection mandate to the State of Oregon. The incentive payment is considered paid to the eligible provider even when part or all of the incentive may offset the debt. The Authority may not reduce the incentive payment amount for any other purpose unless permitted or required by federal or state law; and

(e) The Authority shall distribute 1099 forms to the tax identification number designated to receive the Medicaid EHR incentive payment.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS, 413.042 & 414.033

Hist.: DMAP 13-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 20-2013(Temp), f. & cert. ef. 4-26-13 thru 10-23-13; Administrative correction, 11-22-13; DMAP 2-2015(Temp), f. 1-30-15, cert. ef. 2-3-15 thru 8-1-15; DMAP 20-2015, f. & cert. ef. 4-8-15; DMAP 21-2016(Temp), f. 5-11-16, cert. ef. 5-13-16 thru 11-8-16; DMAP 47-2016, f. 7-18-16, cert. ef. 8-1-16; DMAP 18-2017, f. 5-31-17, cert. ef. 6-2-17

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410-165-0060

Eligibility

(1) There are three categories of eligibility criteria:
(a) Eligible professionals;
(b) Eligible professionals practicing predominately in a FQHC or RHC; and

(c) Eligible hospitals.

(2) To be eligible for a Medicaid EHR incentive payment for the program year, an eligible professional as listed in Table 165-0060-1 shall meet the program criteria each year:

(a) To be eligible for an incentive payment, an eligible professional shall at a minimum:

(A) Meet and follow the scope of practice regulations as applicable for each profession as defined in 42 CFR Part 440;

(B) Meet the following certified EHR technology and meaningful use requirements for the corresponding year of participation:

(i) First year of participation:

(I) Adopt, implement, or upgrade certified EHR technology; or

(II) Meet the definition of a Meaningful EHR user described in OAR 410-165-0020.

(ii) Subsequent years of participation, meet the definition of a Meaningful EHR user described in OAR 410-165-0020.

(C) Either not be a hospital-based professional or for program year 2013 or later meet the requirements that allow a reversal of a hospital-based determination. To be considered non-hospital-based in future program years after an initial reversal determination, the professional shall attest in each subsequent program year that the professional continues to meet the requirements. To meet the requirements, the professional shall do all of the following:

(i) Fund the acquisition, implementation, and maintenance of certified EHR technology, including supporting hardware and interfaces needed for meaningful use without reimbursement from an eligible hospital and use such certified EHR technology in the inpatient or emergency department of a hospital;

(ii) Provide documentation to the Program for review and approval for the program year and in accordance with OAR 410-165-0040;

(iii) Meet all applicable requirements to receive an incentive payment; and

(iv) If attesting to meaningful use, demonstrate using all encounters at all locations equipped with certified EHR technology, including those in the inpatient and emergency departments of the hospital.

(D) Meet one of the following criteria:

(i) Have a minimum of 30 percent patient volume attributable to individuals receiving Medicaid; or

(ii) Be a pediatrician who has a minimum of 20 percent patient volume attributable to individuals receiving Medicaid.

(b) An eligible professional shall calculate patient volume as listed in Table 165-0060-2 by using the patient volume calculation method either of patient encounter or of patient panel. The patient panel volume calculation method may be used only when all of the following apply:

(A) The patient panel is appropriate as a patient volume calculation method for the eligible professional; and

(B) There is an auditable data source to support the patient panel data.

(c) An eligible professional shall calculate patient volume as listed in Table 165-0060-2 by using either the patient volume of the eligible professional or the patient volume of the group. The patient volume of the group may be used only when all of the following apply:

(A) The group's patient volume is appropriate as a patient volume methodology calculation for the eligible professional;

(B) There is an auditable data source to support the group's patient volume determination;

(C) All eligible professionals in the group must use the same patient volume calculation method for the program year;

(D) The group uses the entire practice or clinic's patient volume and does not limit patient volume in any way; and

(E) If an eligible professional works inside and outside of the group, then the patient volume calculation includes only those encounters associated with the group and not the eligible professional's outside encounters.

(d) An eligible professional's patient volume must be calculated using one of the following methods:

(A) The patient encounter calculation method based on the patient volume of the eligible professional requires that:

(i) For program year 2011 or 2012, the eligible professional shall divide the total Medicaid encounters by the total patient encounters that

were rendered by the eligible professional in any representative, continuous 90-day period in the preceding calendar year; or

(ii) For program year 2013 and later, the eligible professional shall divide the total Medicaid encounters by the total patient encounters that were rendered by the eligible professional in any representative, continuous 90-day period either in the preceding calendar year or in the twelve-month timeframe preceding the date of attestation. The eligible professional may not use the same 90-day timeframe to calculate patient volume in different program years.

(B) The patient encounter calculation method based on the patient volume of the group requires that:

(i) For program year 2011 or 2012, the eligible professional shall divide the group's total Medicaid encounters by the group's total patient encounters in any representative, continuous 90-day period in the preceding calendar year;

(ii) For program year 2013 and later, the eligible professional shall divide the group's total Medicaid encounters by the group's total patient encounters in any representative, continuous 90-day period either in the preceding calendar year or in the twelve-month timeframe preceding the date of attestation. The eligible professional may not use the same 90-day timeframe to calculate patient volume in different program years.

(C) The patient panel calculation method based on the patient volume of the eligible professional requires that:

(i) For program year 2011 or 2012, the eligible professional shall:

(I) Add the total Medicaid patients assigned to the eligible professional's panel in any representative, 90-day period in the prior calendar year, provided at least one Medicaid encounter took place with the patient in the preceding calendar year, to the eligible professional's unduplicated Medicaid encounters rendered in the same 90-day period; and

(II) Divide the result calculated above in section (1)(d)(C)(i)(I) by the sum of the total patients assigned to the eligible professional's panel in the same 90-day period, provided at least one encounter took place with the patient during the preceding calendar year, plus all of the unduplicated patient encounters in the same 90-day period.

(ii) For program year 2013 and later, the eligible professional shall:

(I) Add the total Medicaid patients assigned to the eligible professional's panel in any representative, 90-day period in either the preceding calendar year or during the 12-month timeframe preceding the attestation date, provided at least one Medicaid encounter took place with the individual during the 24 months before the beginning of the 90-day period, to the eligible professional's unduplicated Medicaid encounters rendered in the same 90-day period; and

(II) Divide the result calculated above in section (2)(d)(C)(ii)(I) by the sum of the total patients assigned to the eligible professional's panel in the same 90-day period, provided at least one encounter took place with the patient during the 24 months before the beginning of the 90-day period, plus all of the unduplicated patient encounters in the same 90-day period; and

(III) Not use the same 90-day timeframe to calculate patient volume in different program years.

(D) The patient panel calculation method based on the patient volume of the group requires that:

(i) For program year 2011 or 2012, the eligible professional shall:

(I) Add the total Medicaid patients assigned to the group's panel in any representative, 90-day period in the prior calendar year, provided at least one Medicaid encounter took place with the patient in the preceding calendar year, to the group's unduplicated Medicaid encounters in the same 90-day period; and

(II) Divide the result calculated above in section (1)(d)(D)(i)(I) by the sum of the total patients assigned to the group's panel in the same 90-day period, provided at least one encounter took place with the patient during the preceding calendar year, plus all of the unduplicated patient encounters in the same 90-day period.

(ii) For program year 2013 and later, the eligible professional shall:

(I) Add the total Medicaid patients assigned to the group's panel in any representative, 90-day period in either the preceding calendar year or during the 12-month timeframe preceding the attestation date, provided at least one Medicaid encounter took place with the individual during the 24 months before the beginning of the 90-day period, to the group's unduplicated Medicaid encounters that same 90-day period;

(II) Divide the result calculated above in section (1)(d)(D)(ii)(I) by the sum of the total patients assigned to the group's panel in the same 90-day period, provided at least one encounter took place with the patient during the 24 months before the beginning of the 90-day period, plus all of the unduplicated patient encounters in the same 90-day period; and

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(III) Not use the same 90-day timeframe to calculate patient volume in different program years.

(3) To be eligible for a Medicaid EHR incentive payment for the program year, an eligible professional practicing predominantly in an FQHC or an RHC, as listed in Table 165-0060-1, must meet the Program eligibility criteria each year by meeting either section (2) of this rule or by meeting the following FQHC and RHC specific criteria:

(a) At a minimum, the eligible professional shall:

(A) Meet and follow the scope of practice regulations as applicable for each professional as prescribed by 42 CFR Part 440;

(B) Meet the following certified EHR technology and meaningful use requirements for the corresponding year of participation:

(i) First year of participation:

(I) Adopt, implement, or upgrade certified EHR technology; or

(II) Meet the definition of a meaningful EHR user described in OAR 410-165-0020.

(ii) Subsequent years of participation, meet the definition of a meaningful EHR user described in OAR 410-165-0020.

(C) Have a minimum of 30 percent patient volume attributable to needy individuals.

(b) An eligible professional shall calculate patient volume as listed in Table 165-0060-3 by using the patient volume calculation method either of patient encounter or of patient panel. The patient panel volume calculation method may be used only when all of the following apply:

(A) The patient panel is appropriate as a patient volume calculation method for the eligible professional; and

(B) There is an auditable data source to support the patient panel data.

(c) An eligible professional must calculate patient volume as listed in Table 165-0060-3 by using either the patient volume of the eligible professional or the patient volume of the group. The group's patient volume may be used only when all of the following apply:

(A) The group's patient volume is appropriate as a patient volume methodology calculation for the eligible professional;

(B) There is an auditable data source to support the group's patient volume determination;

(C) All eligible professionals in the group shall use the same patient volume calculation method for the program year;

(D) The group uses the entire practice or clinic's patient volume and does not limit patient volume in any way; and

(E) If an eligible professional works inside and outside of the group, the patient volume calculation includes only those encounters associated with the group and not the outside encounters.

(d) An eligible professional's needy individual patient volume shall be calculated using one of the following methods:

(A) The patient encounter calculation method based on the eligible professional's patient volume:

(i) For program year 2011 or 2012, the eligible professional shall divide the total needy individual encounters by the total patient encounters that were rendered by the eligible professional in any representative, continuous 90-day period in the preceding calendar year;

(ii) For program year 2013 and later, the eligible professional shall divide the total needy individual encounters by the total patient encounters that were rendered by the eligible professional in any representative, continuous 90-day period either in the preceding calendar year or in the 12-month timeframe preceding the date of attestation. The eligible professional may not use the same 90-day timeframe to calculate patient volume in different program years.

(B) The patient encounter calculation method based on the patient volume of the group requires that:

(i) For program year 2011 or 2012, the eligible professional shall divide the group's total needy individual encounters by the group's total patient encounters in any representative, continuous 90-day period in the preceding calendar year;

(ii) For program year 2013 and later, divide the group's total needy individual encounters by the group's total patient encounters in any representative, continuous 90-day period either in the preceding calendar year or in the 12-month timeframe preceding the date of attestation. The eligible professional may not use the same 90-day timeframe to calculate patient volume in different program years.

(C) The patient panel calculation method based on the patient volume of the eligible professional requires that:

(i) For program year 2011 or 2012, the eligible professional shall:

(I) Add the total needy individual patients assigned to the eligible professional's panel in any representative, 90-day period in the prior calendar year, provided at least one Medicaid encounter took place with the patient

in the preceding calendar year, to the eligible professional's unduplicated needy individual encounters rendered in the same 90-day period; and

(II) Divide the result calculated above in section (2)(d)(C)(i)(I) by the sum of the total patients assigned to the eligible professional's panel in the same 90-day period, provided at least one encounter took place with the patient during the preceding calendar year, plus all of the unduplicated patient encounters in the same 90-day period.

(ii) For program year 2013 and later, the eligible professional shall:

(I) Add the total needy individual patients assigned to the eligible professional's panel in any representative, 90-day period either in the preceding calendar year or during the 12-month timeframe preceding the attestation date, provided at least one Medicaid encounter took place with the individual during the 24 months before the beginning of the 90-day period, to the eligible professional's unduplicated needy individual encounters rendered the same 90-day period;

(II) Divide the result calculated above in section (2)(d)(C)(ii)(I) by the sum of the total patients assigned to the eligible professional's panel in the same 90-day period, provided at least one encounter took place with the patient during the 24 months before the beginning of the 90-day period, plus all of the unduplicated patient encounters in the same 90-day period; and

(III) Not use the same 90-day timeframe to calculate patient volume in different program years.

(D) The patient panel calculation method based on the patient volume of the group requires that:

(i) For program year 2011 or 2012, the eligible professional shall:

(I) Add the total needy individual patients assigned to the group's panel in any representative, 90-day period in the prior calendar year, provided at least one needy individual encounter took place with the patient in the preceding calendar year, to the group's unduplicated Medicaid encounters in the same 90-day period; and

(II) Divide the result calculated above in section (2)(d)(D)(i)(I) by the sum of the total patients assigned to the group's panel in the same 90-day period, provided at least one encounter took place with the patient during the preceding calendar year, plus all of the unduplicated patient encounters in the same 90-day period.

(ii) For program year 2013 and later, the eligible professional shall:

(I) Add the total needy individual patients assigned to the group's panel in any representative, 90-day period either in the preceding calendar year or during the 12-month timeframe preceding the attestation date, provided at least one needy individual encounter took place with the individual during the 24 months before the beginning of the 90-day period, to the group's unduplicated Medicaid encounters that same 90-day period;

(II) Divide the result calculated above in section (2)(d)(D)(ii)(I) by the sum of the total patients assigned to the group's panel in the same 90-day period, provided at least one encounter took place with the patient during the 24 months before the beginning of the 90-day period, plus all of the unduplicated patient encounters in the same 90-day period; and

(III) Not use the same 90-day timeframe to calculate patient volume in different program years.

(4) To be eligible for a Medicaid EHR incentive payment for the program year, an eligible hospital shall meet the Program criteria each year:

(a) To be eligible for an incentive payment, an eligible hospital shall meet the certified EHR technology and meaningful use requirements for the corresponding year of participation:

(A) First year of participation:

(i) Adopt, implement, or upgrade certified EHR technology;

(ii) Eligible hospitals that are children's hospitals shall meet the definition of a meaningful EHR user; or

(iii) Eligible hospitals that participate in both the Medicare and Medicaid EHR Incentive Programs shall demonstrate meaningful use under the Medicare EHR Incentive Program to CMS and be deemed a meaningful EHR user for the program year.

(B) Subsequent years of participation:

(i) Eligible hospitals that participate in both the Medicare and Medicaid EHR Incentive Programs shall demonstrate meaningful use under the Medicare EHR Incentive Program to CMS and be deemed a meaningful EHR user for the program year; or

(ii) Eligible hospitals that are children's hospitals shall meet the definition of a meaningful EHR user;

(b) If an eligible hospital is an acute care hospital, it shall calculate patient volume by dividing the total eligible hospital Medicaid encounters by the total encounters in any representative, continuous 90-day period:

(A) For program year 2011 and 2012, in the preceding federal fiscal year;

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(B) For program year 2013 and later, either in the preceding federal fiscal year or in the 12-month timeframe preceding the attestation date. The eligible hospital may not use the same 90-day timeframe to calculate patient volume in different program years.

(5) Table 165-0060-1. [Table not included. See ED. NOTE.]

(6) Table 165-0060-2. [Table not included. See ED. NOTE.]

(7) Table 165-0060-3. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042 & 414.033

Hist.: DMAP 20-2011, f. 7-21-11, cert. ef. 7-22-11; DMAP 20-2013(Temp), f. & cert. ef. 4-26-13 thru 10-23-13; DMAP 56-2013, f. & cert. ef. 10-22-13; DMAP 2-2015(Temp), f. 1-30-15, cert. ef. 2-3-15 thru 8-1-15; DMAP 20-2015, f. & cert. ef. 4-8-15; DMAP 21-2016(Temp), f. 5-11-16, cert. ef. 5-13-16 thru 11-8-16; DMAP 47-2016, f. 7-18-16, cert. ef. 8-1-16; DMAP 3-2017(Temp), f. & cert. ef. 2-2-17 thru 7-31-17; DMAP 18-2017, f. 5-31-17, cert. ef. 6-2-17

410-165-0080

Meaningful Use

(1) An eligible provider shall demonstrate being a meaningful EHR user as prescribed by 42 CFR 495.4 (2010, 2012, 2015, and 2016), 42 CFR 495.6 (2010, 2012, and 2014), 42 CFR 495.8 (2010, 2012, and 2014), 42 CFR 495.20 (2015), 42 CFR 495.22 (2015 and 2016), 42 CFR 495.24 (2015 and 2016), and 42 CFR 495.40 (2015 and 2016):

(a) For eligible providers demonstrating meaningful use under the Program in Stage 1 prior to December 15, 2015 to comply with 42 CFR 495.8, the State of Oregon requires the eligible provider to satisfy the objective "Capability to submit electronic data to immunization registries or immunization information systems and actual submission in accordance with applicable law and practice;"

(b) For eligible hospitals:

(A) If CMS deems an eligible hospital to be a meaningful EHR user for the Medicare EHR Incentive Program for a program year, the eligible hospital is automatically deemed to be a meaningful EHR user for the Program for the same program year;

(B) An eligible hospital deemed to be a meaningful EHR user by CMS for a program year does not have to meet the requirements specified in section (1)(a) for the Program for the same program year.

(2) As prescribed by 42 CFR 495.4 (2010, 2012, 2015, and 2016), the following meaningful use EHR reporting periods shall be used by eligible providers that are demonstrating meaningful use to the Program for:

(a) Program years 2011, 2012, and 2013:

(A) Eligible professionals:

(i) For the first time, either:

(I) Any continuous 90-day period in the calendar year; or

(II) The calendar year.

(ii) For a subsequent time: the calendar year.

(B) Eligible hospitals:

(i) For the first time, either:

(I) Any continuous 90-day period in the federal fiscal year; or

(II) The federal fiscal year.

(ii) For a subsequent time, the federal fiscal year.

(b) Program year 2014:

(A) Eligible professionals, either:

(i) Any continuous 90-day period in calendar year 2014; or

(ii) Any of the following 3-month periods:

(I) January 1, 2014 through March 31, 2014;

(II) April 1, 2014 through June 30, 2014;

(III) July 1, 2014 through September 30, 2014; or

(IV) October 1, 2014 through December 31, 2014.

(B) Eligible hospitals, either:

(i) Any continuous 90-day period in federal fiscal year 2014; or

(ii) Any of the following 3-month periods:

(I) October 1, 2013 through December 31, 2013;

(II) January 1, 2014 through March 31, 2014;

(III) April 1, 2014 through June 30, 2014; or

(IV) July 1, 2014 through September 30, 2014.

(c) Program year 2015, prior to December 15, 2015:

(A) Eligible professionals attesting for the first year, either:

(i) Any continuous 90-day period in the calendar year; or

(ii) The calendar year.

(B) Eligible professionals attesting for a subsequent year, the calendar

year;

(C) Eligible hospitals attesting for the first year, either:

(i) Any continuous 90-day period in the federal fiscal year; or

(ii) The federal fiscal year.

(D) Eligible hospitals attesting for a subsequent year, the federal

fiscal year.

(d) Program year 2015, on or after December 15, 2015, any continuous 90-day period in the calendar year;

(e) Program year 2016 before January 1, 2017: (A) The first year, either:

(i) Any continuous 90-day period in the calendar year; or

(ii) The calendar year.

(B) A subsequent year, the calendar year.

(f) Program year 2016 after January 1, 2017:

(A) Any continuous 90-day period in the calendar year; or

(B) The calendar year.

(g) Program year 2017:

(A) The first year, either:

(i) Any continuous 90-day period in the calendar year; or

(ii) The calendar year.

(B) A subsequent year:

(i) Any continuous 90-day period in the calendar year; or

(ii) The calendar year for meaningful use objectives; and

(iii) A calendar year for the Clinical Quality Measures.

(h) Program year 2018 and subsequent program years:

(A) The first year, either:

(i) Any continuous 90-day period in the calendar year; or

(ii) The calendar year.

(B) A subsequent year, the calendar year.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042 & 414.033

Hist.: DMAP 13-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 20-2013(Temp), f. & cert. ef. 4-26-13 thru 10-23-13; DMAP 56-2013, f. & cert. ef. 10-22-13; DMAP 2-2015(Temp), f. 1-30-15, cert. ef. 2-3-15 thru 8-1-15; DMAP 20-2015, f. & cert. ef. 4-8-15; DMAP 21-2016(Temp), f. 5-11-16, cert. ef. 5-13-16 thru 11-8-16; DMAP 47-2016, f. 7-18-16, cert. ef. 8-1-16; DMAP 3-2017(Temp), f. & cert. ef. 2-2-17 thru 7-31-17; DMAP 18-2017, f. 5-31-17, cert. ef. 6-2-17

Rule Caption: Clearly Define Rehabilitative and Habilitative Therapies and Remove Client Copayment to Comply with Federal Requirements

Adm. Order No.: DMAP 19-2017

Filed with Sec. of State: 6-9-2017

Certified to be Effective: 6-9-17

Notice Publication Date: 5-1-2017

Rules Amended: 410-129-0020, 410-129-0070, 410-129-0100, 410-131-0040, 410-131-0080, 410-131-0120

Rules Repealed: 410-129-0020(T), 410-129-0040, 410-129-0070(T), 410-131-0040(T), 410-131-0080(T), 410-131-0120(T), 410-129-0190, 410-131-0100

Subject: The Division needs to comply with the federal requirements within ACA to allow habilitative therapy in addition to rehabilitative therapy. Removing copayments, Oregon Health Plan (OHP) Plus clients are not responsible for paying a co-payment effective January 1, 2017, per OAR 410-120-1230.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-129-0020

Therapy Plan of Care, Goals, Outcomes, and Record Requirements

(1) Therapy shall be based on a prescribing practitioner's written order and therapy treatment plan with goals and objectives developed from an evaluation or re-evaluation. The limits, authorization, and plan of treatment criteria apply to both rehabilitative and habilitative therapy. The definition for both is the following:

(a) "Rehabilitative Services" means health care services that help an individual re-establish, restore, or improve skills and functioning for daily living that have been lost or impaired due to illness, injury, or disability;

(b) "Habilitative Services" means health care services that help an individual keep, learn, or improve skills and functioning for daily living, designed to establish skills that have not yet been acquired at an age-appropriate level. Examples include therapy for a child who is not walking or talking at the expected age.

(2) The therapy regimen shall be taught to individuals, including the client, family members, foster parents, and caregivers who can assist in the achievement of the goals and objectives. The client must be present when the therapy is appropriately demonstrated at the time of teaching to assure that the therapy regimen is performed safely and correctly. The Division may not authorize extra treatments for teaching.

(3) All speech-language pathology (SLP) treatment services require a therapy plan of care that is required for prior authorization (PA) for payment.

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(4) The Division shall provide authorization for the level of care or type of service that meets the client's medical need consistent with the Health Evidence Review Commission's (HERC) Prioritized List of Health Services (Prioritized List) and guideline notes.

(5) These rules do not limit or effect any obligations of a school district or education entity eligible for reimbursement for covered, health-related services provided in support of a child with a disability education program required by state and federal law. School-sponsored services are supplemental to other health plan therapy services and are not considered duplicative. See OAR 410 division 133 SBHS rules for services provided by public education providers and OAR 410-141-3420(7)(L) (Managed Care Entity (MCE) Billing and Payment).

(6) The SLP therapy plan must adhere to the licensing board requirements of care and shall include:

(a) Client's name and diagnosis;

(b) The type, amount, frequency, and duration of the proposed rehabilitative or habilitative therapy;

(c) Individualized, measurably objective, short-term and long-term functional goals;

(d) Dated signature of the therapist or the prescribing practitioner establishing the therapy plan of care; and

(e) Evidence of certification of the therapy plan of care by the prescribing practitioner.

(7) SLP therapy records shall include:

(a) Documentation of each session. Records must include a record of history taken, procedures performed and tests administered, results obtained, and conclusions and recommendations made. Documentation may be in the form of a "SOAP" (Subjective Objective Assessment Plan) note or the equivalent;

(b) Therapy provided;

(c) Duration of therapy; and

(d) Signature of the speech-language pathologist.

(8) Documentation of clinical activities may be supplemented by the use of flowsheets or checklists; however, these may not substitute for or replace detailed documentation of assessments and interventions.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025, 414.065 & 681.205

Hist.: HR 5-1991, f. 1-18-91, cert. ef. 2-1-91; HR 27-1993, f. & cert. ef. 10-1-93; HR 36-1994, f. 12-30-94, cert. ef. 1-1-95; OMAP 36-1999, f. & cert. ef. 10-1-99; DMAP 22-2014, f. & cert. ef. 4-2-14; DMAP 49-2016, f. 7-26-16, cert. ef. 8-1-16; DMAP 70-2016(Temp), f. 12-5-16, cert. ef. 1-1-17 thru 6-29-17; DMAP 19-2017, f. & cert. ef. 6-9-17

410-129-0070

Limitations

(1) SLP services:

(a) Shall be provided by a practitioner as described in OAR 410-129-0065(1);

(b) Requirements for rehabilitative and habilitative therapy treatment:

(A) May not exceed one hour per day each for a group or individual;

(B) Shall be either group or individual and may not be combined in the authorization period; and

(C) Requires PA after 30 visits per calendar year.

(c) The following SLP services do not require payment authorization but are limited to:

(A) Two SLP evaluations in a 12-month period;

(B) Two evaluations for dysphagia in a 12-month period;

(C) Up to four re-evaluations in a 12-month period;

(D) One evaluation for speech-generating/augmentative communication system or device and shall be reimbursed per recipient in a 12-month period;

(E) One evaluation for voice prosthesis or artificial larynx shall be reimbursed in a 12-month period;

(F) Purchase, repair, or modification of electrolarynx;

(G) Supplies for speech therapy shall be reimbursed up to two times in a 12-month period, not to exceed \$5each.

(d) The purchase, rental, repair, or modification of a speech-generating/augmentative communication system or device must have PA. Rental of a speech-generating/ augmentative communication system or device is limited to one month. All rental fees shall be applied to the purchase price.

(2) Audiology and hearing aid services:

(a) All hearing services shall be performed by a licensed physician, audiologist, or hearing aid specialist;

(b) Reimbursement is limited to one monaural hearing aid every five years for adults (age 21 and older) who meet the following criteria: Loss of 45 decibel (dB) hearing level or greater in two or more of the following three frequencies: 1000, 2000, and 3000 Hertz (Hz) in the better ear;

(c) Adults who meet the criteria above and also have vision correctable to no better than 20/200 in the better eye may be authorized for two hearing aids for safety purposes. A vision evaluation shall be submitted with the PA request;

(d) Two binaural hearing aids shall be reimbursed no more frequently than every three years for children (birth through age 20) who meet the following criteria:

(A) Pure tone average of 25dB for the frequencies of 500Hz, 1000Hz, and 2000Hz; or

(B) High frequency average of 35dB for the frequencies of 3000Hz, 4000Hz, and 6000Hz.

(e) An assistive listening device may be authorized for individuals aged 21 or over who are unable to wear or who cannot benefit from a hearing aid. An assistive listening device is defined as a simple amplification device designed to help the individual hear in a particular listening situation. It is restricted to a hand-held amplifier and headphones;

(f) Services that do not require payment authorization:

(A) One basic audiologic assessment in a 12-month period;

(B) One basic comprehensive audiometry (audiologic evaluation) in a 12-month period;

(C) One hearing aid examination and selection in a 12-month period;

(D) One pure tone audiometry (threshold) test; air and bone in a 12-month period;

(E) One electroacoustic evaluation for hearing aid; monaural in a 12-month period;

(F) One electroacoustic evaluation for hearing aid; binaural in a 12-month period;

(G) Hearing aid batteries — maximum of 60 individual batteries in a 12-month period. Clients shall meet the criteria for a hearing aid.

(g) Services that require PA:

(A) Hearing aids;

(B) Repair of hearing aids, including ear mold replacement;

(C) Hearing aid dispensing and fitting fees;

(D) Assistive listening devices;

(E) Cochlear implant batteries.

(h) Services not covered:

(A) FM systems — vibro-tactile aids;

(B) Earplugs;

(C) Adjustment of hearing aids is included in the fitting and dispensing fee and is not reimbursable separately;

(D) Aural rehabilitation therapy is included in the fitting and dispensing fee and is not reimbursable separately;

(E) Tinnitus masker.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065 & 681.325

Hist.: HR 27-1993, f. & cert. ef. 10-1-93; HR 36-1994, f. 12-30-94, cert. ef. 1-1-95; OMAP 36-1999, f. & cert. ef. 10-1-99; OMAP 38-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 39-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 14-2005, f. 3-11-05, cert. ef. 4-1-05; DMAP 17-2007, f. 12-5-07, cert. ef. 1-1-08; DMAP 22-2014, f. & cert. ef. 4-2-14; DMAP 49-2016, f. 7-26-16, cert. ef. 8-1-16; DMAP 70-2016(Temp), f. 12-5-16, cert. ef. 1-1-17 thru 6-29-17; DMAP 19-2017, f. & cert. ef. 6-9-17

410-129-0100

Medicare/Medicaid Claims

(1) When an individual not in managed care has both Medicare and Medicaid coverage, audiologists shall bill audiometry and all diagnostic testings to Medicare first. Medicare will automatically forward these claims to Medicaid. Refer to OAR 410-120-1210 (General Rules) for information on Division or CCO reimbursement.

(2) Audiologists shall bill all hearing aids and related services directly to the Division on an OHP 505. Payment authorization is required on most of these services.

(3) If Medicare transmits incorrect information to the Division, or if an out-of-state Medicare carrier or intermediary was billed, providers shall bill the Division using an OHP 505 form. If any payment is made by the Division, an adjustment request shall be submitted to correct payment, if necessary.

(4) Send all completed OHP 505 forms to the Division.

(5) Hearing aid dealers shall bill all services directly to the Division on a CMS-1500. Payment authorization is required on most services.

(6) When a client not in managed care has both Medicare and Medicaid coverage, speech-language pathologists shall bill services to Medicare first. Medicare will automatically forward these claims to Medicaid. Refer to OAR 410-120-1210 (General Rules) for information on Division or CCO reimbursement.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025, 414.034, 414.065, 414.329, 414.706 & 414.710

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Hist.: HR 5-1991, f. 1-18-91, cert. ef. 2-1-91; HR 11-1992, f. & cert. ef. 4-1-92; OMAP 36-1999, f. & cert. ef. 10-1-99; OMAP 12-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 57-2004, f. 9-10-04, cert. ef. 10-1-04; DMAP 49-2016, f. 7-26-16, cert. ef. 8-1-16; DMAP 19-2017, f. & cert. ef. 6-9-17

410-131-0040

Foreword for Physical and Occupation Therapy

(1) The Division's Physical and Occupational Therapy (PT/OT) Services rules are designed to assist licensed physical and occupational therapists deliver health care services and prepare health claims for clients with medical assistance program coverage. The limits, authorization, and plan of treatment criteria apply to both rehabilitative and habilitative therapy. The definition for both is the following:

(a) "Rehabilitative Services" means health care services that help an individual re-establish, restore, or improve skills and functioning for daily living that have been lost or impaired due to illness, injury, or disability;

(b) "Habilitative Services" means health care services that help an individual keep, learn, or improve skills and functioning for daily living, designed to establish skills that have not yet been acquired at an age-appropriate level. Examples include therapy for a child who is not walking or talking at the expected age.

(2) OAR 410-131-0040 through 0160:

(a) Apply to services delivered by home health agencies and by hospital-based therapists in the outpatient setting. Billing and reimbursement for therapy services delivered by home health agencies and hospital outpatient departments must comply with the rules in their respective provider guides;

(b) Do not apply to services provided to hospital inpatients; and

(c) May not limit or effect any obligations of a school district or education entity eligible for reimbursement for covered, health-related services provided in support of a child with a disability education program required by state and federal law. School-sponsored services are supplemental to other health plan therapy services and are not considered duplicative. (See OAR 410 division 133 SBHS rules for services provided by public education providers and OAR 410-141-3420(7)(g)(L) (Managed Care Entity (MCE) Billing and Payment).

(3) The Division shall enroll only the following types of providers as performing providers under the PT/OT program:

(a) An individual licensed by the relevant state licensing authority to practice physical therapy; and

(b) An individual licensed by the relevant state licensing authority to practice occupational therapy.

(4) All Division rules are intended to be used in addition to the General Rules for Health Systems Division programs (OAR 410 division 120) and the Oregon Health Plan (OHP) (OAR 410 division 141).

(5) The Oregon Health Evidence Review Commission's (HERC) Prioritized List of Health Services is found in OAR 410-141-0520 and defines the covered services.

(6) The PT/OT provider shall comply with all Division rules that are in effect on the date services are provided.

Stat. Auth.: ORS 413.042, 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 8-1991, f. 1-25-91, cert. ef. 2-1-91; DMAP 35-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 49-2016, f. 7-26-16, cert. ef. 8-1-16; DMAP 70-2016(Temp), f. 12-5-16, cert. ef. 1-1-17 thru 6-29-17; DMAP 19-2017, f. & cert. ef. 6-9-17

410-131-0080

Therapy Plan of Care and Record Requirements

(1) A rehabilitative or habilitative therapy plan of care must have PA in order to receive payment.

(2) The Division shall authorize for the level of care or type of service that meets the client's medical need consistent with the Health Evidence Review Commission's (HERC) Prioritized List of Health Services (Prioritized List) and guideline notes.

(3) The rehabilitative or habilitative therapy plan must adhere to the licensing board requirements of care and shall include:

(a) Client's name, diagnosis, and type, amount, frequency, and duration of the proposed rehabilitative or habilitative therapy;

(b) Individualized, measurably objective functional goals;

(c) Documented need for extended service, considering 60 minutes as the maximum length of a treatment session;

(d) Plan to address implementation of a home management program as appropriate from the initiation of therapy forward;

(e) Dated signature of the therapist or the prescribing practitioner establishing the therapy plan of care; and

(f) For home health clients, any additional requirements included in OAR chapter 410 division 127.

(4) The therapy treatment plan and regimen shall be taught to the client, family, foster parents, or caregiver during the therapy treatments. The client must be present for demonstrating therapy during teaching to assure therapy regimen is performed safely and correctly. The division may not authorize extra treatments for teaching.

(5) A therapy plan must comply with the relevant state licensing authority's standards.

(6) If a state licensing authority has not adopted therapy plan of care standards, the therapy plan of care shall include:

(a) The need for continuing rehabilitative or habilitative therapy clearly stated;

(b) Changes to the rehabilitative or habilitative therapy plan of care, including changes to duration and frequency of intervention; and

(c) Any changes or modifications to the therapy plan of care shall be documented, signed, and dated by the prescribing practitioner or therapist who developed the plan.

(7) Therapy records shall include:

(a) A written referral, including:

(A) The client's name;

(B) The ICD-10-CM diagnosis code; and

(C) Specification of the type of services, amount, and duration required.

(b) A copy of the signed therapy plan of care shall be on file in the provider's therapy record prior to billing for services;

(c) Documents, evaluations, re-evaluations, and progress notes to support the rehabilitative or habilitative therapy treatment plan and prescribing provider's written orders for changes in the therapy treatment plan;

(d) Modalities used on each date of service;

(e) Procedures performed and amount of time spent performing the procedures, documented and signed by the therapist; and

(f) Documentation of splint fabrication and time spent fabricating the splint.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 688.135, 414.065

Hist.: HR 8-1991, f. 1-25-91, cert. ef. 2-1-91; HR 19-1992, f. & cert. ef. 7-1-92; OMAP 18-1999, f. & cert. ef. 4-1-99; OMAP 32-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 41-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 39-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 35-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 65-2014, f. 10-30-14, cert. ef. 11-4-14; DMAP 51-2015, f. 9-22-15, cert. ef. 10-1-15; DMAP 49-2016, f. 7-26-16, cert. ef. 8-1-16; DMAP 70-2016(Temp), f. 12-5-16, cert. ef. 1-1-17 thru 6-29-17; DMAP 19-2017, f. & cert. ef. 6-9-17

410-131-0120

Limitations of Coverage and Payment

(1) The provision of PT/OT evaluations and therapy services require a prescribing practitioner referral, and services shall be supported by a therapy plan of care signed and dated by the prescribing practitioner as specified in 42 CFR 440.1110.

(2) PT/OT initial evaluations and re-evaluations do not require PA, but are limited to the following:

(a) Up to two initial evaluations in any 12-month period; and

(b) Up to four re-evaluation services in any 12-month period.

(3) Reimbursement is limited to the initial evaluation when both the initial evaluation and a re-evaluation are provided on the same day.

(4) School-sponsored therapy services are considered supplemental to other plan-covered therapy services that the student receives. School-based therapy services may not apply toward the client's maximum therapy allowances. (See OAR chapter 410, division 133 SBHS rules.)

(5) All other occupational and physical therapy treatments require PA following 30 visits in a calendar year. See OAR 410-131-0160 and Table 131-0160-1.

(6) A licensed occupational or physical therapist or a licensed occupational or physical therapy assistant under the supervision of a therapist shall be in constant attendance while therapy treatments are performed:

(a) Rehabilitative and habilitative therapy treatments may not exceed one hour per day each for occupational and physical therapy;

(b) Modalities:

(A) Require PA;

(B) Up to two modalities may be authorized per day of treatment;

(C) Need to be billed in conjunction with a therapeutic procedure code; and

(D) Each individual supervised modality code may be reported only once for each client encounter. See Table 131-0160-1.

(c) Massage therapy is limited to two units per day of treatment and shall be authorized only in conjunction with another therapeutic procedure or modality.

(7) Supplies and materials for the fabrication of splints shall be billed at the acquisition cost, and reimbursement may not exceed the Division's

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maximum allowable in accordance with the physician fee schedule. Acquisition cost is purchase price plus shipping. Off-the-shelf splints, even when modified, are not included in this service.

(8) The following services are not covered:

(a) Services not medically appropriate;

(b) Services that are not paired with a funded diagnosis on the Health Evidence Review Commission's (HERC) Prioritized List of Health Services pursuant to OAR 410-141-0520;

(c) Work hardening;

(d) Back school and back education classes;

(e) Hippotherapy (e.g., horse or equine-assisted therapy);

(f) Services included in OAR 410-120-1200 (Excluded Services Limitations);

(g) Durable medical equipment and medical supplies other than those splint supplies listed in Table 131-0120-1 and OAR 410-131-0280.

(9) Physical capacity examinations are not a part of the PT/OT program but may be reimbursed as administrative examinations when ordered by the local branch office. See OAR chapter 410, division 150, for information on administrative examinations and report billing.

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

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 688.135, 414.065

Hist.: HR 8-1991, f. 1-25-91, cert. ef. 2-1-91; HR 19-1992, f. & cert. ef. 7-1-92; HR 28-1993, f. & cert. ef. 10-1-93; HR 43-1994, f. 12-30-94, cert. ef. 1-1-95; HR 2-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 8-1998, f. & cert. ef. 3-2-98; OMAP 18-1999, f. & cert. ef. 4-1-99; OMAP 32-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 53-2002, f. & cert. ef. 10-1-02; OMAP 64-2003, f. 9-8-03, cert. ef. 10-1-03; OMAP 59-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 15-2005, f. 3-11-05, cert. ef. 4-1-05; DMAP 35-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; DMAP 23-2014, f. & cert. ef. 4-4-14; DMAP 49-2016, f. 7-26-16, cert. ef. 8-1-16; DMAP 70-2016(Temp), f. 12-5-16, cert. ef. 1-1-17 thru 6-29-17; DMAP 19-2017, f. & cert. ef. 6-9-17

Rule Caption: CCOs Ensure Discharge of Members from Extended/Long-Term Psychiatric Programs as Soon As Reasonably Possible

Adm. Order No.: DMAP 20-2017

Filed with Sec. of State: 6-12-2017

Certified to be Effective: 6-29-17

Notice Publication Date: 5-1-2017

Rules Amended: 410-141-3160

Rules Repealed: 410-141-3160(T)

Subject: The Division needs to amend this rule to provide immediate direction and clarification to the Coordinated Care Organizations and Prepaid Health Plans in order that they should be compliant with the Code of Federal Regulations as specified by the USDOJ. The changes to this rule outline that CCOs shall ensure members receiving services from extended or long-term psychiatric care programs, such as secure residential facilities, shall receive follow-up services as medically appropriate to facilitate discharge as soon as reasonably possible. CCOs shall coordinate the care of members that enter the Oregon State Hospital and develop agreements with community mental health programs regarding the management of adults who were members upon entering the state hospital and are transitioning from the Oregon State Hospital.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-141-3160

Integration and Care Coordination

(1) In order to achieve the objectives of providing CCO members integrated person-centered care and services, CCOs shall assure that physical, behavioral, and oral health services are consistently provided to members in all age groups and all covered populations when medically appropriate and consistent with the needs identified in the community health assessment and community health improvement plan (Plan). CCOs shall develop, implement, and participate in activities supporting a continuum of care that integrates physical, behavioral, and oral health interventions in ways that are whole to the member and serve members in the most integrated setting appropriate to their needs:

(a) CCOs shall ensure the provision of care coordination, treatment engagement, preventive services, community-based services, and follow-up services for all members' health conditions;

(b) CCOs shall enter into contracts with providers of residential chemical dependency treatment services not later than July 1, 2013, and shall notify the Authority within 30 calendar days of executing the contract;

(c) By July 1, 2014, each CCO shall have a contractual relationship with any dental care organization that serves members in the area where they reside;

(d) CCOs shall have adequate, timely, and appropriate access to hospital and specialty services. CCOs shall establish hospital and specialty service agreements that include the role of patient-centered primary care homes and that specify processes for requesting hospital admission or specialty services, performance expectations for communication, and medical records sharing for specialty treatments at the time of hospital admission or discharge for after-hospital follow up appointments;

(e) CCOs shall demonstrate how hospitals and specialty services shall be accountable to achieve successful transitions of care. CCOs shall ensure members are transitioned out of hospital settings into the most appropriate independent and integrated community settings. This includes transitional services and supports for children, adolescents, and adults with serious behavioral health conditions facing admission to or discharge from acute psychiatric care, residential treatment settings and the state hospital.

(2) CCOs shall develop evidence-based or innovative strategies for use within their delivery system networks to ensure access to integrated and coordinated care, especially for members with intensive care coordination needs. CCOs shall:

(a) Demonstrate that each member has a primary care provider or primary care team that is responsible for coordination of care and transitions and that each member has the option to choose a primary care provider of any eligible CCO participating provider type.

(b) Ensure that members with high health needs, multiple chronic conditions, or behavioral health issues are involved in accessing and managing appropriate preventive, health, behavioral health, remedial and supportive care and services;

(c) Use and require its provider network to use individualized care plans to the extent feasible to address the supportive and therapeutic needs of each member, particularly those with intensive care coordination needs, including members with severe and persistent mental illness receiving home and community-based services covered under the state's 1915(1) State Plan Amendment, and those receiving DHS Medicaid-funded long-term care services. Plans shall reflect member family or caregiver preferences and goals to ensure engagement and satisfaction;

(d) Implement systems to assure and monitor improved transitions in care so that members receive comprehensive transitional care, and improve members' experience of care and outcomes, particularly for transitions between hospitals and long-term care;

(e) Demonstrate that participating providers have the tools and skills necessary to communicate in a linguistically and culturally appropriate fashion with members and their families or caregivers and to facilitate information exchange between other providers and facilities (e.g., addressing issues of health literacy, language interpretation, having electronic health record capabilities);

(f) Work across provider networks to develop partnerships necessary to allow for access to and coordination with social and support services, including crisis management and community prevention and self-managed programs;

(g) Communicate its integration and coordination policies and procedures to participating providers, regularly monitor providers' compliance and take any corrective action necessary to ensure compliance. CCOs shall document all monitoring and corrective action activities.

(3) CCOs shall assess the needs of its membership and make available supported employment and assertive community treatment services available when medically appropriate and when an appropriate provider is available. Appropriate providers are those that meet the requirements in 309-016-0825. When no appropriate provider is available, the CCO shall consult with the Division and develop an approved plan to make supported employment and assertive community treatment services available.

(4) CCOs shall develop and use Patient Centered Primary Care Home (PCPCH) capacity by implementing a network of PCPCHs to the maximum extent feasible:

(a) PCPCHs shall become the focal point of coordinated and integrated care, so that members have a consistent and stable relationship with a care team responsible for comprehensive care management;

(b) CCOs shall develop mechanisms that encourage providers to communicate and coordinate care with the PCPCH in a timely manner, using electronic health information technology, where available;

(c) CCOs shall engage other primary care provider (PCP) models to be the primary point of care and care management for members, where there is insufficient PCPCH capacity;

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(d) CCOs shall develop services and supports for primary care that are geographically located as close as possible to the member's residence and are, if available, offered in nontraditional settings that are accessible to families, diverse communities, and underserved populations. CCOs shall ensure that all other services and supports are provided as close to the member's residence as possible.

(5) If a CCO implements other models of patient-centered primary health care in addition to the use of PCPCH, the CCO shall ensure member access to coordinated care services that provide effective wellness and prevention, coordination of care, active management and support of individuals with special health care needs, a patient and family-centered approach to all aspects of care, and an emphasis on whole-person care in order to address a patient's physical and behavioral health care needs.

(6) If the member is living in a DHS Medicaid funded long-term care (LTC) nursing facility or community-based care facility, or other residential facility, the CCO shall communicate with the member and the DHS Medicaid funded long-term care provider or facility about integrated and coordinated care services:

(a) The CCO shall establish procedures for coordinating member health services and how it will work with long-term care providers or facilities to develop partnerships necessary to allow for access to and coordination of CCO services with long-term care services and crisis management services;

(b) CCOs shall coordinate transitions to DHS Medicaid-funded long-term care by communicating with local AAA/APD offices when members are being discharged from an inpatient hospital stay or transferred between different LTC settings;

(c) CCOs shall develop a Memorandum of Understanding (MOU) or contract with the local type B Area Agency on Aging or the local office of the Department's APD, detailing their system coordination agreements regarding members' receiving Medicaid-funded LTC services.

(7) For members who are discharged to post hospital extended care at the time of admission to a skilled nursing facility (SNF), the CCO shall notify the appropriate AAA/APD office and begin appropriate discharge planning. The CCO shall pay for the post hospital extended care benefit if the member was a member of the CCO during the hospitalization preceding the nursing facility placement. The CCO shall notify the SNF and the member no later than two working days before discharge from post hospital extended care. For members who are discharged to Medicare Skilled Care, the CCO shall notify the appropriate AAA/APD office when the CCO learns of the admission.

(8) When a member's care is being transferred from one CCO to another or for OHP clients transferring from fee-for-service or PHP to a CCO, the CCO shall make every reasonable effort within the laws governing confidentiality to coordinate, including but not limited to ORS 414.679, transfer of the OHP client into the care of a CCO participating provider.

(9) CCOs shall establish agreements with the Local Mental Health Authorities (LMHAs) and Community Mental Health Programs (CMHPs) operating in the service area, consistent with ORS 414.153, to maintain a comprehensive and coordinated behavioral health delivery system and to ensure member access to mental health services, some of which are not provided under the global budget.

(10) CCOs shall coordinate a member's care even when services or placements are outside the CCO service area. CCO assignment is based on the case member's residence and referred to as county of origin or jurisdiction. Temporary placements by the Authority, Department, or health services placements for services including residential placements may be located out of the service area; however, the CCO shall coordinate care while in placement and discharge planning for return to county of origin or jurisdiction. For out of area placements, an out of area exception shall be made for the member to retain the CCO enrollment in the county of origin or jurisdiction, while the member's placement is a temporary residential placement elsewhere. For program placements in Child Welfare, BRS, OYA, and PTRS, refer to OAR 410-141-3050 for program specific rules.

(11) CCOs shall develop agreements with community mental health programs regarding:

(a) The management of adults who were members upon entering the state hospital and are transitioning from the Oregon State Hospital; and

(b) Care coordination of residential services and supports for adults and children.

(12) CCOs shall coordinate with Community Emergency Service Agencies including, but not limited to, police, courts, juvenile justice, corrections, LMHAs, and CMHPs to promote an appropriate response to members experiencing a behavioral health crisis and to prevent inappropriate use of the emergency department or jails.

(13) CCOs shall accept FFS authorized services, medical, and pharmacy prior authorizations, ongoing services where a FFS prior authorization is not required, and services authorized by the Division's Medical Management Review Committee for 90 days, or until the CCO can establish a relationship with the member and develop an evidence based, medically appropriate coordinated care plan, whichever is later, except where customized equipment, services, procedures, or treatment protocol require service continuation for no less than six months.

(14) Except as provided in OAR 410-141-3050, CCOs shall coordinate patient care, including care required by temporary residential placement outside the CCO service area, or out-of-state care in instances where medically necessary specialty care is not available in Oregon:

(a) CCO enrollment shall be maintained in the county of origin with the expectation of the CCO to coordinate care with the out of area placement and local providers;

(b) The CCO shall coordinate the discharge planning when the member returns to the county of origin.

(15) CCOs shall coordinate and authorize care, including instances where the member's medically appropriate care requires services and providers outside the CCO's contracted network, in another area, out-of-state, or a unique provider specialty not otherwise contracted. The CCO shall pay the services and treatment plan as a non-participating provider pursuant to OAR 410-120-1295.

Stat. Auth.: ORS 413.042, 414.615, 414.625, 414.635 & 414.651
Stats. Implemented: ORS 414.610-414.685

Hist.: DMAP 16-2012(Temp), f. & cert. ef. 3-26-12 thru 9-21-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 1-2013(Temp), f. & cert. ef. 1-4-13 thru 7-2-13; DMAP 34-2013, f. & cert. ef. 6-27-13; DMAP 72-2016(Temp), f. 12-28-16, cert. ef. 1-1-17 thru 6-29-17; DMAP 20-2017, f. 6-12-17, cert. ef. 6-29-17

Oregon Health Authority, Health Systems Division: Mental Health Services Chapter 309

Rule Caption: Clarify Procedural Detail and Process for Taking Action on a Behavioral Health Provider Certificate

Adm. Order No.: MHS 4-2017

Filed with Sec. of State: 5-23-2017

Certified to be Effective: 6-1-17

Notice Publication Date: 5-1-2017

Rules Adopted: 309-008-0905

Rules Amended: 309-008-0800, 309-008-0900, 309-008-1100, 309-008-1200, 309-008-1300

Rules Repealed: 309-008-0800(T), 309-008-0900(T), 309-008-0905(T), 309-008-1100(T), 309-008-1200(T), 309-008-1300(T)

Subject: Under Oregon Revised Statutes 413.032-413.033, 430.357, 430.335, and 430.637, the Oregon Health Authority certifies and has the authority to regulate behavioral health treatment service providers who serve vulnerable individuals, including those with mental health issues and/or substance use disorders. These rules set the minimum standards for serving these vulnerable individuals and describe the process by which the Authority regulates the service providers. On November 30, 2016, the Authority promulgated new division 008 rules to regulate behavioral health provider certificates. These rules provide additional clarification and procedural detail regarding the circumstance and process in which the Authority may take an action on a certificate. These rule adoptions and amendments are necessary to provide for and clarify the Authority's practices and procedures regarding when and under what circumstances it may take action on a certificate, such as suspension, revocation, denial of an application, denial of a renewal, and imposing a condition on the certificate.

Rules Coordinator: Sandy Cafourek — (503) 945-6430

309-008-0800

Conduct of Certification Reviews

(1) The Division shall employ review procedures deemed adequate to determine applicant or provider compliance with applicable administrative rules, statutes, other applicable regulations, and as necessary, contractual obligations. These procedures may include but are not limited to:

(a) Entry and inspection of any service delivery location;

(b) Review of documents pursuant to this rule; and

(c) Interviews with or a request for completion of a questionnaire by individuals knowledgeable about the provider or applicant. Individuals

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interviewed may include program staff, managers, governing or advisory board members, allied agencies, individuals, their family members, and significant others.

(2) Program staff must cooperate with Division staff during a certification review.

(3) Within 30 days following the completion of each discretionary review, the Division may, at their discretion, issue a report and require a Plan of Correction congruent with section (4) of this rule.

(4) Within 30 days following the completion of each initial or renewal certification review, the Division shall issue a report that includes:

(a) A statement of any deficiency including a description of the review findings related to non-compliance with applicable administrative rules, statutes, other applicable regulations, and any required corrective actions where applicable;

(b) Pursuant to a certification review when the Division determines a provider or applicant is not operating in substantial compliance with all applicable statutes, administrative rules, and other regulations, and the plan of correction (POC) process is appropriate, the Division may require the provider or applicant to submit a POC. The Division shall provide written notice of the requirement to submit a POC, and the provider or applicant shall prepare and submit a POC according to the following terms:

(A) The provider or applicant shall submit the POC to the Division within 30 days of receiving the statement of deficiency. The Division may issue up to a 90-day extension to the existing certification to allow the provider or applicant to complete the plan of correction process;

(B) The POC shall address each finding of non-compliance and shall include:

(i) The planned action already taken to correct each finding of non-compliance;

(ii) The anticipated or requested timeframe for the completion of each corrective action not yet complete at the time of POC submission to the Division;

(iii) A description of and plan for quality assurance activities intended to ensure ongoing compliance; and

(iv) The name of the individual responsible for ensuring the implementation of each corrective action within the plan of correction.

(c) If the Division finds that clarification or supplementation to the POC is required prior to approval, Division staff shall contact the provider or applicant to provide notice of requested clarification or supplementation, and the provider or applicant shall submit an amended plan of correction within 14 calendar days of notification;

(d) The provider shall submit a sufficient POC approved by the Division prior to receiving a certificate. Upon the Division's approval of the POC, the Division shall issue the appropriate certification;

(e) The Division may deny, suspend, or revoke an applicant or provider's certification if the provider fails to submit an adequate POC within the timeframes established in this rule.

Stat. Auth.: ORS 161.390, 161.392, 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168

Stats. Implemented: 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637, 813.021, & 813.260

Hist.: MHS 6-2016(Temp), f. 6-28-16, cert. ef. 7-1-16 thru 12-27-16; MHS 16-2016, f. 11-28-16, cert. ef. 11-30-16; MHS 30-2016(Temp), f. 12-30-16, cert. ef. 1-1-17 thru 6-29-17; MHS 4-2017, f. 5-23-17, cert. ef. 6-1-17

309-008-0900

Issuing Certificates

(1) The Division shall issue an approved applicant a certificate to provide behavioral health treatment services. Every certificate shall:

(a) Be signed by the Director;

(b) Apply to all approved service delivery locations listed in the accompanying letter;

(c) List the service delivery rules under which the applicant or provider is approved to provide services;

(d) List the effective and expiration dates of the certificate;

(e) List any conditions applied to the certificate;

(f) List any variances approved by the Division; and

(g) Be accompanied by a letter from the Division noting:

(A) All service delivery locations approved under the certificate; and

(B) Approved alternative practices related to variances listed on the certificate.

(2) After conduct of the certification review, the Division shall issue initial certificates to new applicants that demonstrate substantial compliance with applicable administrative rules and statutes:

(a) For up to one calendar year from the date of initial certification; and

(b) Initial certifications may be issued with conditions pursuant to this rule.

(3) After conduct of the certification review and the plan of correction process where applicable, the Division shall renew the certificate of an applicant with a current certification that demonstrates substantial compliance with applicable administrative rules or statutes:

(a) For up to three calendar years from the date of renewal; and

(b) Renewal certifications may be issued with conditions pursuant to these rules.

Stat. Auth.: ORS 161.390, 161.392, 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168

Stats. Implemented: ORS 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637, 813.021, & 813.260

Hist.: MHS 6-2016(Temp), f. 6-28-16, cert. ef. 7-1-16 thru 12-27-16; MHS 16-2016, f. 11-28-16, cert. ef. 11-30-16; MHS 30-2016(Temp), f. 12-30-16, cert. ef. 1-1-17 thru 6-29-17; MHS 4-2017, f. 5-23-17, cert. ef. 6-1-17

309-008-0905

Conditions

(1) The Division may elect at any time and at its discretion to place conditions on a certificate upon a finding that:

(a) The applicant or provider employs or contracts with any program staff for whom there is substantiated evidence of abuse, neglect, or mistreatment;

(b) The applicant or provider employs or contracts with any program staff that fails to meet relevant minimum qualifications described in these rules, service delivery rules, or other applicable law;

(c) There is substantiated evidence of abuse, neglect, or mistreatment;

(d) The applicant or provider operates such that there is a threat to the health, welfare, or safety of an individual or the public;

(e) The applicant or provider has substantially failed to comply with these rules, service delivery rules, or other applicable law;

(f) The applicant or provider fails to fully implement a Plan of Correction or adequately maintain a corrective action;

(g) The Division has issued the applicant or provider through two or more consecutive certification reviews substantially similar findings of non-compliance with these rules, service delivery rules, or other applicable administrative rules, statutes, or regulations;

(h) There is a need for increased regulatory oversight of the applicant or provider; or

(i) The applicant or provider fails to comply with any reporting requirements relating to funding certification.

(2) The Division shall consider the sum of the circumstances including but not limited to the following criteria when deciding whether to impose conditions as opposed to denying, suspending, refusing to renew, or revoking a certificate:

(a) The expressed willingness and demonstrated ability of the applicant or provider to gain and maintain compliance with all applicable administrative rules and law;

(b) Submission of a POC prescribing reasonable, sustained, and timely resolution to areas of non-compliance;

(c) The relative availability of alternative providers to address any service needs that would be unmet if the applicant or provider is not issued a certificate with conditions as an alternative to revocation or refusal to award a certificate; or

(d) The applicant or provider's historical compliance with Division rules, previous conditions placed on certificates, and previous POCs.

(3) Conditions to the certificate may include:

(a) Requiring corrective actions with associated timeframes for completion necessary for the applicant or provider to correct areas of non-compliance or concern identified by the Division;

(b) Limiting the total number of individuals enrolled in services or on a waitlist for services;

(c) Limiting the population such as narrowing the age range of individuals who the applicant or provider may serve;

(d) Limiting the scope and type of services that the applicant or provider may provide;

(e) Other conditions deemed necessary by the Division to ensure the health and safety of individuals and the public; and

(f) Other conditions deemed necessary by the Division for the purpose of ensuring regulatory compliance with this or other applicable administrative rules and law.

(4) The Division may impose conditions on a certificate With Notice or Without Notice. In both processes, a provider or an applicant may request an informal conference:

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(a) The Division may issue the conditions With Notice by issuing a Notice of Impending Imposition of Certificate Condition (Notice) at least 48 hours prior to issuing an Order Imposing Certificate Condition (Order) to a provider or an applicant. After the Order is issued, the Division shall revise the certificate to indicate the conditions that have been ordered;

(b) The Division may impose the conditions Without Notice only if the Division determines that there is an imminent threat to individuals such that the Division determines it is not safe or practical to give an applicant or a provider advance notice. The Division may impose the conditions without notice by issuing an Order Imposing Certificate Condition (Order) to a provider or an applicant. After the Order is issued, the Division shall revise the certificate to indicate the conditions that have been ordered.

(5) The Notice may be provided in writing or orally. When the Notice is provided in writing, it shall be sent by certified or registered mail or delivered in person to the applicant or provider. If the Notice is provided orally, it may be provided by telephone or in person to the applicant, provider, or person represented as being in charge of the program. When the Notice is delivered orally, the Division shall subsequently provide written notice to the applicant or provider by registered or certified mail. The Notice shall:

(a) Generally describe the acts or omissions of the applicant or provider and the circumstances that led to the finding that the imposition of a certificate 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 impending condition;

(d) Identify a person within the Division whom the applicant or provider 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 the Order is scheduled to take effect; and

(f) Offer that the applicant or provider may request an informal conference prior to the issuance of the Order Imposing Certificate Condition, or if the provider has already requested an informal conference, specify the date and time that an informal conference shall be held.

(6) If an informal conference is requested regarding conditions, the conference shall be held at a location designated by the Division. If determined to be appropriate by the Division, the conference may be held by telephone. Following the informal conference, the Division may modify the conditions. The timing of the informal conference is described as follows:

(a) If a Notice is issued, the applicant or provider may request an informal conference to object to the Division's proposed action before the condition is scheduled to take effect. The request for an informal conference shall be made prior to the date the conditions are intended to be effective. If timely requested, the informal conference shall be held within seven days of the request. The Order Imposing Condition may be issued at any time after the informal conference;

(b) If an Order Imposing Condition is issued without a prior Notice, the applicant or provider may within 48 hours of the issuance of the Order request an informal conference. If timely requested, the informal conference shall be held within two business days of receipt of the request. Following the informal conference, the Division at its discretion may modify the conditions.

(7) When an Order is issued, the Division must serve the Order 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 certificate condition;

(f) Right to request a contested case hearing under ORS Chapter 183;

(g) A statement that if a request for hearing is not received by the Division within 21 days of the date of the Order, the applicant or provider shall have waived the right to a hearing under ORS Chapter 183;

(h) Findings of specific acts or omissions of the applicant or provider that are grounds for the condition and the reasons the acts or omissions create a situation for which the imposition of a certificate condition is warranted; and,

(i) A statement that the Division may combine the hearing on the Order with any other proceeding affecting the certificate. The procedures

for the combined proceeding must be those applicable to the other proceedings affecting the certificate.

(8) Hearing:

(a) If the Division serves an Order Imposing Condition, the applicant or provider is entitled to a contested case hearing pursuant to ORS Chapter 183;

(b) The Division must receive the request for a hearing within 21 days of the date of Order. If a request for hearing is not received by the Division within 21 days of the date of the Order, the applicant or provider shall have waived the right to a hearing under ORS Chapter 183;

(c) The applicant or provider may request a contested case hearing, ORS Chapter 183, regarding the imposition of the conditions in addition to, or in lieu of, an informal conference. Requesting a contested case hearing may not delay the effective date of the conditions.

(9) When a restriction of enrollment or intake is in effect pursuant to an Order, the Division in its sole discretion may authorize the provider to admit or serve new individuals for whom the Division determines that alternate placement or provider is not feasible.

(10) Conditions may be imposed for the duration of the certificate or limited to some other shorter period of time. If the condition corresponds to the certificate period, the reasons for the condition shall be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the condition shall be indicated on the certificate.

(11) When the applicant or provider determines that the circumstances leading to imposition of the condition no longer exist and that effective systems are in place to ensure that similar deficiencies do not recur, the applicant or provider may make written request to the Division for re-inspection.

(12) Re-inspection:

(a) If the Division finds that the situation for which the condition was imposed has been corrected and finds that systems are in place to ensure that similar deficiencies do not recur, the condition shall be withdrawn, and the Division must revise the certificate accordingly. Following re-inspection, the Division shall notify the facility by telephone of the decision to withdraw the condition. Telephone notification shall be followed by written notification;

(b) If the Division determines after a re-inspection that the situation for which the condition was imposed continues to exist or that there are not sufficient systems in place to prevent similar deficiencies, the certificate condition may not be withdrawn, and the Division is not obligated to re-inspect again for at least 45 days. A decision not to withdraw the Order shall be given to the applicant or provider in writing, and the applicant or provider shall be informed of the right to a contested case hearing pursuant to ORS Chapter 183. Nothing in this rule is intended to limit the Division's authority to conduct a certification review at any time.

(13) The Division may deny, suspend, and refuse to renew or revoke the certificate when the provider or applicant fails to comply timely with the condition.

(14) When the Division orders a condition be placed on a certificate under the provisions of this rule, the applicant or provider is entitled to request a hearing in accordance with ORS Chapter 183.

Stat. Auth.: ORS 161.390, 161.392, 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168

Stats. Implemented: ORS 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637, 813.021, & 813.260

Hist.: MHS 30-2016(Temp), f. 12-30-16, cert. ef. 1-1-17 thru 6-29-17; MHS 4-2017, f. 5-23-17, cert. ef. 6-1-17

309-008-1100

Nonrenewal, Suspension, and Revocation of Certification

(1) Immediate Revocation or Suspension of a certificate may occur when:

(a) The Division finds there is substantial failure to comply with applicable statutes, administrative rules, service delivery rules, or other applicable regulations, such that the Division finds there is a serious danger to the public health or safety;

(b) The provider demonstrates substantial failure to comply with these administrative rules and other applicable regulations such that the health or safety of individuals is jeopardized to the degree that immediate cessation of services by the provider is considered necessary to prevent harm to the individual.

(2) The Division may revoke, suspend, or refuse to renew a certificate of one or more service delivery locations listed on the certificate when the Division determines that there is substantiated evidence of abuse, neglect, or mistreatment or determines that a provider:

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(a) Demonstrates substantial failure to comply with these administrative rules or with applicable state or federal law;

(b) Demonstrates a substantial failure to comply with applicable rules and regulations such that the health or safety of individuals is found to be jeopardized during two certification reviews within a six-year period;

(c) Fails to maintain any State of Oregon license that is a prerequisite for providing services that were approved;

(d) Has a direct contract with the Division, and the Division terminates its agreement or contract with the provider;

(e) Fails to comply with the requirements of one or more conditions on the certificate;

(f) Fails to submit and or implement a POC sufficient to come into substantial compliance with these and other applicable rules or regulations;

(g) Submits falsified or incorrect information to the Division;

(h) Refuses to allow access to information for the purpose of verifying compliance with applicable statutes, administrative rules, or other applicable regulations within a specified date or fails to submit such information following the date specified for such a submission in the written notification;

(i) Fails to maintain sufficient staffing or fails to comply with staff qualification requirements.

(3) When the Division determines the need to revoke, suspend, or deny renewal of a certificate issued under these rules, a notice of intent to take action on the certificate shall be issued to the provider.

Stat. Auth.: ORS 161.390, 161.392, 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168

Stats. Implemented: ORS 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637, 813.021, & 813.260

Hist.: MHS 6-2016(Temp), f. 6-28-16, cert. ef. 7-1-16 thru 12-27-16; MHS 16-2016, f. 11-28-16, cert. ef. 11-30-16; MHS 30-2016(Temp), f. 12-30-16, cert. ef. 1-1-17 thru 6-29-17; MHS 4-2017, f. 5-23-17, cert. ef. 6-1-17

309-008-1200

Informal Conference

(1) Within ten calendar days of the Division issuance of an Order of Suspension, a notice of intent to revoke or notice of intent to nonrenew (refusal to renew) the certificate to an applicant or provider pursuant to these rules, the Division shall offer the applicant or provider an opportunity for an informal conference. The applicant or provider shall make its request for an informal conference in writing within seven days of the issuance of notice. Upon receipt of a timely written request, the Division shall select a location and time for such a conference, provided that the conference occurs within 14 days of the Division's receipt of the request.

(2) Following such a conference, the Division may:

(a) Approve the application or renewal or initiate the process of imposing conditions to certification as described and allowed by these rules as an alternative to denying or revoking certification;

(b) Continue to proceed with action on the provider's certificate up to and including suspension, revocation, or refusal to renew the certificate; or

(c) Withdraw or amend the order of suspension, notice of intent to revoke, or notice of intent to nonrenew the certificate.

(3) The Division shall provide written notice of its decision under section (2) of this rule within 14 calendar days of the informal conference.

(4) Informal conferences regarding conditions are not described in this rule and instead are described in OAR 309-008-0905.

Stat. Auth.: ORS 161.390, 161.392, 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168

Stats. Implemented: ORS 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637, 813.021, & 813.260

Hist.: MHS 6-2016(Temp), f. 6-28-16, cert. ef. 7-1-16 thru 12-27-16; MHS 16-2016, f. 11-28-16, cert. ef. 11-30-16; MHS 30-2016(Temp), f. 12-30-16, cert. ef. 1-1-17 thru 6-29-17; MHS 4-2017, f. 5-23-17, cert. ef. 6-1-17

309-008-1300

Hearings

(1) An applicant or provider who issued a notice of intent to revoke, suspend, or refuse to renew its certificate under these rules shall be entitled to request a hearing in accordance with ORS Chapter 183.

(2) When the Division orders the imposition of a condition or orders immediate suspension of a certificate under the provisions of this rule, the provider shall be entitled to request a hearing in accordance with ORS Chapter 183.

Stat. Auth.: ORS 161.390, 161.392, 179.040, 179.505, 413.042, 413.032-413.033, 426.072, 426.236, 426.500, 430.010, 430.021, 430.256, 430.357, 430.560, 430.640, 430.870, 743A.168

Stats. Implemented: ORS 413.520, 426.060, 426.140, 430.010, 430.254, 430.335, 430.590, 430.620, 430.637, 813.021, & 813.260

Hist.: MHS 6-2016(Temp), f. 6-28-16, cert. ef. 7-1-16 thru 12-27-16; MHS 16-2016, f. 11-28-16, cert. ef. 11-30-16; MHS 30-2016(Temp), f. 12-30-16, cert. ef. 1-1-17 thru 6-29-17; MHS 4-2017, f. 5-23-17, cert. ef. 6-1-17

Rule Caption: Rules Revisions Required to Comply with Federal 1915(i) Home and Community-Based Regulations

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Rules Amended: 309-035-0100, 309-035-0105, 309-035-0110, 309-035-0115, 309-035-0120, 309-035-0125, 309-035-0130, 309-035-0135, 309-035-0140, 309-035-0145, 309-035-0150, 309-035-0155, 309-035-0165, 309-035-0170, 309-035-0175, 309-035-0185, 309-035-0190

Rules Repealed: 309-035-0100(T), 309-035-0105(T), 309-035-0110(T), 309-035-0115(T), 309-035-0120(T), 309-035-0125(T), 309-035-0130(T), 309-035-0135(T), 309-035-0140(T), 309-035-0145(T), 309-035-0150(T), 309-035-0155(T), 309-035-0163(T), 309-035-0165(T), 309-035-0170(T), 309-035-0175(T), 309-035-0183(T), 309-035-0185(T), 309-035-0190(T), 309-035-0195(T), 309-035-0200(T), 309-035-0205(T), 309-035-0210(T), 309-035-0215(T), 309-035-0220(T), 309-035-0225(T), 309-035-0113, 309-035-0117, 309-035-0157, 309-035-0159, 309-035-0167, 309-035-0250, 309-035-0260, 309-035-0270, 309-035-0280, 309-035-0290, 309-035-0300, 309-035-0310, 309-035-0320, 309-035-0330, 309-035-0340, 309-035-0350, 309-035-0360, 309-035-0370, 309-035-0380, 309-035-0390, 309-035-0400, 309-035-0410, 309-035-0420, 309-035-0430, 309-035-0440, 309-035-0450, 309-035-0460, 309-035-0500, 309-035-0550, 309-035-0560, 309-035-0570, 309-035-0580, 309-035-0590, 309-035-0600

Subject: Under Oregon Revised Statutes 413.042 and 413.450, the Authority licenses and has authority to regulate mental health treatment providers, including residential treatment facilities and residential treatment homes for adults with mental health disorders. The Authority's administrative rules set the minimum standards for providing services in licensed settings and describe the process by which the Authority regulates the service providers. The rules provide updated procedural detail regarding federal regulation requirements, as issued by the Centers for Medicare and Medicaid Services (CMS), for 1915(i) Home and Community-Based Services (HCBS). The purpose of these regulations is to ensure individuals receive HCBS in settings that are integrated in and support full access to the greater community. The rules also provide clarification of current and appropriate behavioral health terminology. In particular, the use of "adults with mental health disorders," rather than "mentally or emotionally disturbed persons."

Rules Coordinator: Sandy Cafourek — (503) 945-6430

309-035-0100

Purpose and Scope

(1) These rules prescribe standards by which the Health Systems Division (Division) of the Oregon Health Authority (Authority) licenses community based residential treatment facilities and community based residential treatment homes for adults with mental health disorders. The standards promote optimum health, mental and social well-being, and recovery for adults with mental health disorders through the availability of a wide range of home and community based residential settings and services. They prescribe how services will be provided in safe, secure, and homelike environments that recognize the dignity, individuality, and right to self-determination of each individual.

(a) These rules incorporate and implement the requirements of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services for Home and Community-Based Services (HCBS) authorized under section 1915(i) of the Social Security Act;

(b) These rules establish requirements to ensure individuals receive services in settings that are integrated in and support the same degree of

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access to the greater community as individuals not receiving HCBS, consistent with the standards set out in OAR chapter 411, division 4.

(2) These rules apply to all Residential Treatment Homes (RTH) and Residential Treatment Facilities (RTF) providing services to adults with mental health disorders regardless of whether the program receives public funds. These rules prescribe distinct standards in some areas for Secure Residential Treatment Facilities (SRTF) or are based on the number of individuals receiving services in the program.

Stat. Auth.: ORS 413.042 & 443.450

Stats. Implemented: ORS 443.400 - 443.465 & 443.991

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 4-2008, f. & cert. ef. 6-12-08; MHS 10-2011(Temp), f. & cert. ef. 12-5-11 thru 5-31-12; MHS 5-2012, f. 5-3-12, cert. ef. 5-4-12; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17; MHS 5-2017, f. & cert. ef. 6-8-17

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 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 individual.

(2) "Program Administrator" means the individual designated by the provider as responsible for the daily operation and maintenance of the RTH or RTF or the program administrator's designee.

(3) "Adult" means an individual 18 years of age or older.

(4) "Aid to Physical Functioning" means any special equipment ordered for an individual by a Licensed Medical Professional (LMP) or other qualified health care professional that maintains or enhances the individual's physical functioning.

(5) "Applicant" means the individual or entity, including the Division, who owns, seeks to own or operate, or maintains and operates a program and is applying for a license.

(6) "Approved" means authorized or allowed by the Authority or designee.

(7) "Authority" means the Oregon Health Authority or designee.

(8) "Building Code" means the Oregon Structural Specialty Code adopted by the Building Codes Division of the Oregon Department of Consumer and Business Services.

(9) "Care" means services including but not limited to 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.

(10) "CMS" means the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

(11) "Community Mental Health Program (CMHP)" means the organization of all or a portion of services for individuals with mental health disorders, operated by, or contractually affiliated with, a local mental health authority. CMHP's operate in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Division.

(12) "Competitive Integrated Employment" means work in a competitive labor market that is performed on a full-time or part-time basis and includes self-employment. Competitive Integrated Employment also means individuals are compensated as rates set forth by federal, state or local minimum wage law and eligible for benefits and opportunities for advancement.

(13) "Contract" means a formal written agreement between the CMHP, CCO, Oregon Health Plan contractor, or the Division and a provider.

(14) "Coordinated Care Organization (CCO)" means a corporation, governmental agency, public corporation, or other legal entity that is certi-

fied as meeting the criteria adopted by the Authority under ORS 414.625 to be accountable for care management and to provide integrated and coordinated health care for each of the CCO's members.

(15) "Criminal Records Check" means the Oregon Criminal Records Check and the processes and procedures required by OAR 943-007-0001 through 943-007-0501.

(16) "Crisis-Respite Services" means providing services to individuals who are RTF residents for up to 30 days.

(17) "Controlled" means a provider requires an individual to receive services from the provider or requires the individual to receive a particular service as a condition of living or remaining in the HCB setting.

(18) "Designated Representative" means:

(a) Any adult who is not the individual's paid provider who the individual or the individual's representative has authorized to serve as the individual's representative;

(b) The power to act as a designated representative is valid until modified or rescinded. The individual or representative must notify the Division or provider of any change in designation. The notice shall include the individual's or the representative's signature as appropriate;

(c) An individual or the individual's legal representative is not required to appoint a designated representative.

(19) "DSM" means the "Diagnostic and Statistical Manual of Mental Disorders (DSM-V)" published by the American Psychiatric Association.

(20) "Deputy Director" means the deputy director of the Health Systems Division of the Oregon Health Authority or designee.

(21) "Division" means the Health Systems Division of the Oregon Health Authority or designee.

(22) "Division Staff" means individuals employed by the Division or individuals delegated by the Division to conduct licensing activities under these rules.

(23) "Direct Care Staff" means program staff responsible for providing services for an individual.

(24) "Emergency Admission" means an admission to a program made on an urgent basis due to the pressing service needs of the individual.

(25) "Employee" means an individual employed by a provider who receives wages, a salary, or is otherwise paid by the provider for providing the service.

(26) "Evacuation Capability" means the ability of occupants, including individuals and program staff as a group, to 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 National Fire Protective Association (NFPA) 101A 2000 edition worksheets. There are three categories of evacuation capability:

(a) Impractical (SR-2): A group, even with staff assistance, who 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. The Division shall determine evacuation capability for programs in accordance with the NFPA 101A 2000 edition. Programs that are determined to be "Prompt" may be used in Group R occupancies classified by the building official in accordance with the building code.

(27) "Fire Code" means the Oregon Fire Code as adopted by the State of Oregon Fire Marshal.

(28) "HCB" means Home and Community-Based.

(29) "HCBS" means Home and Community-Based Services; services provided in the individual's home or community.

(30) "Home and Community-Based Settings" or "HCB Settings" means a physical location meeting the requirements of OAR 411-004-0020 where an individual receives Home and Community-Based Services.

(31) "Home-like" means an environment that promotes the dignity, security, and comfort of individuals through the provision of personalized care and services and encourages independence, choice, and decision-making by the individual.

(32) "Individual" means any individual being considered for placement or is currently residing in a licensed program receiving residential services regulated by these rules on a 24-hour basis, except as excluded under ORS 443.400.

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(33) "Individual Service Record" means an individual's records maintained by the program pursuant to OAR 309-035-0130(4).

(34) "Individually-Based Limitation" means any limitation to the qualities outlined in OAR 309-035-0195, due to health and safety risks. An individually-based limitation is based on a specific assessed need and only implemented with the individual's or individual's representative's informed consent as described in OAR 309-035-0195.

(35) "Informed Consent" means:

(a) That options, risks, and benefits of the services outlined in these rules have been explained to an individual or the individual's legal representative in a manner that the individual comprehends; and

(b) That the individual or legal representative consents to a person-centered service plan of action including any individually-based limitations to the rules prior to implementation of the initial or updated person-centered service plan or any individually-based limitation.

(36) "Legal Representative" means an individual with the legal authority to act for an individual and only within the scope and limits to the authority designated by the court or other agreement. A legal representative may include:

(a) For an individual under the age of 18, the parent, unless a court appoints another individual or agency to act as the guardian; or

(b) For an individual 18 years of age or older, a guardian appointed by a court order or an agent legally designated as the health care representative.

(37) "Licensed Medical Professional (LMP)" means an individual 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.

(b) Whose training, experience, and competence demonstrate the ability to conduct a comprehensive mental health assessment and provide medication management.

(38) "Local Mental Health Authority (LMHA)" means the county court or board of county commissioners of one or more counties operating 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 that contracts with the Division to operate a CMHP or MHO for that county.

(39) "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 individual.

(40) "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.

(41) "Mental Health Assessment" means a determination by a Qualified Mental Health Professional (QMHP) of an individual's need for mental health services. It involves collection and assessment of data pertinent to the individual'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.

(42) "Mistreatment" means the following behaviors displayed by program staff when directed toward an individual:

(a) "Abandonment" means desertion or willful forsaking when the desertion or forsaking results in harm or places the individual at a risk of serious harm;

(b) "Financial Exploitation" means:

(A) Wrongfully taking the assets, funds, or property belonging to or intended for the use of an individual;

(B) Alarming an individual by conveying a threat to wrongfully take or appropriate money or property of the individual if the individual would reasonably believe that the threat conveyed would be carried out;

(C) Misappropriating, misusing, or transferring without authorization any money from any account held jointly or singly by an individual;

(D) Failing to use the individual's income or assets effectively for the support and maintenance of the individual. "Effectively" means use of income or assets for the benefit of the individual.

(c) "Involuntary Restriction" means the involuntary restriction of an individual for the convenience of a program staff or to discipline the individual. Involuntary restriction may include but is not limited to placing restrictions on an individual's freedom of movement by restriction to his or

her room or a specific area or restriction from access to ordinarily accessible areas of the setting, residence, or program, unless agreed to by the service plan.

(d) "Neglect" means active or passive failure to provide the care, supervision, or services necessary to maintain the physical and mental health of an individual that creates a significant risk of harm to an individual or results in significant mental injury to an individual. Services include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other services essential to the individual's well-being;

(e) "Verbal Mistreatment" means threatening significant physical harm or emotional harm to an individual through the use of:

(A) Derogatory statements, inappropriate names, insults, verbal assaults, profanity, or ridicule;

(B) Harassment, coercion, punishment, deprivation, threats, implied threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments;

(C) A threat to withhold services or supports, including an implied or direct threat of termination of services. "Services" include but are not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other service essential to the individual's well-being;

(D) For purposes of this definition, verbal conduct includes but is not limited to the use of oral, written, or gestured communication that is directed to an individual or within their hearing distance or sight, regardless of the individual's ability to comprehend. In this circumstance the assessment of the conduct is based on a reasonable person standard;

(E) The emotional harm that can result from verbal abuse may include but is not limited to anguish, distress, or fear.

(f) "Wrongful Restraint" means the use of physical or chemical restraint except for:

(A) An act of restraint prescribed by a licensed physician pursuant to OAR 309-033-0730; or

(B) A physical emergency restraint to prevent immediate injury to an individual who is in danger of physically harming himself or herself or others, provided that only the degree of force reasonably necessary for protection is used for the least amount of time necessary.

(43) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions that are delegated by a registered nurse to an individual 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.

(44) "Person-Centered Service Plan" means written documentation that includes details of the supports, desired outcomes, activities, and resources required for an individual to achieve and maintain personal goals, health, and safety as described in OAR 411-004-0030.

(45) "Person-Centered Service Plan Coordinator" means the individual, which may be a case manager, service coordinator, personal agents or other individual, designated by the Division to provide case management services or person-centered service planning for and with an individual.

(46) "P.R.N. (pro re nata) Medications and Treatments" means those medications and treatments that have been ordered to be given as needed.

(47) "Program" means the Residential Treatment Facility or Residential Treatment Home licensed by the Division and may refer to the setting grounds, caregiver, staff, or services as applicable to the context.

(48) "Program Staff" means an employee, volunteer, direct care staff, or individual who, by contract with a program, provides a service to an individual.

(49) "Progress Notes" means the notations in the individual's record documenting significant information concerning the individual and summarizing progress made relevant to the objectives outlined in the residential service plan.

(50) "Protection" means the necessary actions taken by the program to prevent abuse, mistreatment, or exploitation of the individual to prevent self-destructive acts and to safeguard the individual's property and funds when used in the relevant context.

(51) "Provider" means the program administrator, individual, or organizational entity licensed by the Division which operates the program and provides services to individuals.

(52) "Representative" refers to both "Designated Representative" and "Legal Representative" as defined in these rules, unless otherwise stated.

(53) "Residency Agreement" means the written, legally enforceable agreement between a provider and an individual or the individual's representative when the individual receives services. The Residency Agreement identifies the rights and responsibilities of the individual and the provider.

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The Residency Agreement provides the individual protection from eviction substantially equivalent to landlord-tenant laws.

(54) "Residential Service Plan" means an individualized, written plan outlining the care and treatment to be provided to an individual in or through the program based upon an individual assessment of needs. The residential service plan may be a section or subcomponent of the individual's overall mental health treatment plan when the program is operated by a mental health service agency that provides other services to the individual.

(55) "Residential Treatment Facility (RTF)" means a program licensed by the Division to provide services on a 24-hour basis for six to 16 individuals as described in ORS 443.400(9). An RTF does not include the entities set out in ORS 443.405.

(56) "Residential Treatment Home (RTH)" means a program that is licensed by the Division and operated to provide services on a 24-hour basis for up to five individuals as defined in ORS 443.400(10). A RTH does not include the entities set out in ORS 443.405.

(57) "Restraints" means any chemical or physical methods or devices that are intended to restrict or inhibit the movement, functioning, or behavior of an individual.

(58) "Room and Board" means compensation for the provision of meals, a place to sleep, and tasks such as housekeeping and laundry.

(59) "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.

(60) "Secure Residential Treatment Facility (SRTF)" means any Residential Treatment Facility, or portion thereof, approved by the Division that restricts an individual's exit from the setting through the use of approved locking devices on individual exit doors, gates, or other closures.

(61) "Services and Supports" means those services defined as habilitation services and psychosocial rehabilitation services under OAR 410-172-0700(1), (2) & 410-172-0710(1), (2).

(62) "Setting" means one or more buildings and adjacent grounds on contiguous properties that are used in the operation of a program.

(63) "Supervision" means a program staff's observation and monitoring of an individual or oversight of a program staff by the program administrator applicable to the context.

(64) "Termination of Residency" means the time at which the individual ceases to reside in the program and includes the transfer of the individual to another program, but does not include absences from the setting for the purpose of taking a planned vacation, visiting family or friends, or receiving time-limited medical or psychiatric treatment.

(65) "Treatment" means a planned, individualized program of medical, psychological or rehabilitative procedures, experiences and activities designed to relieve or minimize mental, emotional, physical or other symptoms or social, educational or vocational disabilities resulting from or related to the mental or emotional disturbance, physical disability or alcohol or drug problem.

(66) "Unit" means the bedroom and other space of an individual receiving services from a program, as agreed to in the Residency Agreement. Unit includes private single occupancy spaces and shared units with roommates.

(67) "Volunteer" means an individual who provides a service or takes part in a service provided to an individual receiving supportive services in a program or other provider and who is not a paid employee of the program or other provider.

Stat. Auth.: ORS 413.042 & 443.450

Stats. Implemented: ORS 443.400 - 443.465 & 443.991

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; MHS 4-2008, f. & cert. ef. 6-12-08; MHS 10-2011(Temp), f. & cert. ef. 12-5-11 thru 5-31-12; MHS 5-2012, f. 5-3-12, cert. ef. 5-4-12; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17; MHS 5-2017, f. & cert. ef. 6-8-17

309-035-0110

Required Home-like Qualities

This rule becomes effective July 1, 2016, and enforceable pursuant to OAR 309-035-0115 (17).

(1) A program, except for a SRTF, must have all of the following qualities:

(a) The setting is integrated in and supports the individual's same degree of access to the greater community as individuals' not receiving HCBS including opportunities for an individual to:

(A) Seek employment and work in competitive integrated employment settings:

(i) For which an individual is compensated at a rate that:

(I) Is not less than the higher of the rate specified in federal, state, or local minimum wage law;

(II) Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not persons with disabilities and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; or

(III) In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills.

(ii) For which an individual is eligible for the level of benefits provided to other employees;

(iii) At a location where the individual interacts with other individuals who are not individuals with disabilities. This does not include supervisory personnel or individuals providing services to the individual to the same extent as individuals without disabilities and who are in comparable positions who interact with others; and

(iv) That present opportunities for advancement similar to those for other employees who are not individuals with disabilities and who have similar positions.

(B) Engage in greater community life;

(C) Control personal resources; and

(D) Receive services in the greater community.

(b) The program is selected by an individual or legal or designated representative from among available setting options for which the individual meets medical necessity criteria including non-disability specific settings and an option for a private unit in a residential setting. The setting options shall be:

(A) Identified and documented in the individuals' person-centered service plan;

(B) Based on the individual's needs and preference; and

(C) Based on the individual's available resources for room and board.

(c) The program ensures individual rights of privacy, dignity, respect, and freedom from coercion and restraint;

(d) The program optimizes, but does not regiment, individual initiative, autonomy, self-direction, and independence in making life choices including but not limited to daily activities, physical environment, and with whom to interact;

(e) The program facilitates individual choice regarding services and supports and individual choice as to who provides the services and supports.

(2) The individual or the individual's representative shall have the opportunity to select from among available setting options including non-disability specific settings and an option for a private unit in a setting. The setting options shall be:

(a) Identified and documented in the person-centered service plan for the individual;

(b) Based on the individual's needs and preferences; and

(c) Based on the individual's available resources for room and board.

(3) The provider shall take reasonable steps to ensure that the program maintains the qualities identified in sections (2) and (3) of this rule. Failure to take reasonable steps may include but is not limited to:

(a) Failure to maintain a copy of the person-centered service plan at the setting;

(b) Failure to cooperate or provide necessary information to the person-centered planning coordinator; or

(c) Failure to attend or schedule a person-centered planning meeting where applicable.

(4) A program shall maintain the following:

(a) The setting shall be physically accessible to an individual;

(b) The provider shall provide the individual a unit of specific physical place that the individual may own, rent, or occupy under a legally enforceable Residency Agreement;

(c) The provider shall provide and include in the Residency Agreement that the individual has, at a minimum, the same responsibilities and protections from an eviction that a tenant has under the landlord-tenant law of Oregon and other applicable laws or rules of the county, city, or other designated entity. For a setting in which landlord-tenant laws do not apply, the Residency Agreement shall provide substantially equivalent protections for the individual and address eviction and appeal processes. The eviction and appeal processes shall be substantially equivalent to the processes provided under landlord-tenant laws;

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(d) The provider shall provide each individual with privacy in their own unit;

(e) The provider shall maintain units with entrance doors lockable by the individual. The program shall ensure that only the individual, the individual's roommate, where applicable, and only appropriate staff as described in the individual's person-centered plan have keys to access the unit;

(f) The provider shall ensure that individuals sharing units have a choice of roommates;

(g) The provider shall provide and include in the Residency Agreement that individuals have the freedom to decorate and furnish their own unit;

(h) The provider shall allow each individual to have visitors of their choosing at any time;

(i) The provider shall ensure each individual has the freedom and support to control their own schedule and activities;

(j) The provider shall ensure each individual has the freedom and support to have access to food at any time.

(5) A SRTF is not required to maintain the qualities or meet the obligations identified in section (4)(d)(e)(f)(h)(i) of this rule. The provider is not required to seek an individually-based limitation to comply with these rules.

(6) A provider is not required to maintain the qualities or meet the obligations identified in section (4) (b) or (c) of this rule when providing crisis-respite services to an individual. The provider is not required to seek an individually-based limitation for such an individual to comply with these rules.

(7) When a provider is unable to meet a qualities outlined under section (4)(e) through (4)(j) of this rule due to threats to the health and safety of the individual or others, the provider may seek an individually-based limitation with the consent of the individual or the individual's legal representative. The provider may not apply an individually-based limitation until the limitation is approved, consented and documented as outlined in OAR 309-035-0195.

Stat. Auth.: ORS 413.042&443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

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 4-2008, f. & cert. ef. 6-12-08; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17; MHS 5-2017, f. & cert. ef. 6-8-17

309-035-0115

Licensing

(1) The Division shall license a program that meets the definition of a RTF or RTH and demonstrates compliance with these and all applicable laws and rules. No person or governmental unit acting individually or jointly with any other person or governmental unit shall establish, maintain, manage, or operate a program without a license issued by the Division.

(2) Where a program serves or seeks to serve another category of individuals, in addition to adults with a mental health disorder, the directors of the Authority and the Department shall determine the department responsible for licensure.

(3) An application for a license must be accompanied by the required fee and submitted to the Division using the forms or format required by the Division. The following information must be included in the application:

(a) Full and complete information as to the identity and financial interest of each individual, including stockholders, having a direct or indirect ownership interest of five percent or more in the program and all officers and directors in the case of a program operated or owned by a corporation;

(b) Name and resume of the program administrator;

(c) Physical address of the setting and mailing address;

(d) Maximum number of individuals to be served at any one time, their age range and evacuation capability;

(e) Proposed annual budget identifying sources of revenue and expenses;

(f) Signed criminal record authorizations for all individuals involved in the operation of the program who will have contact with the individuals including but not limited to caregivers;

(g) A complete set of policies and procedures;

(h) Setting plans and specifications; and

(i) Such other information as the Division may reasonably require.

(4) A complete set of plans and specifications must be submitted to the Division at the time of initial application, whenever a new structure or addition to an existing structure is proposed, or when significant alterations to an existing facility are proposed. Plans shall meet the following criteria:

(a) Plans shall be prepared in accordance with the Building Code and as outlined in OAR 309-035-0140;

(b) Plans shall be to scale and sufficiently complete to allow full review for compliance with these rules; and

(c) Plans shall bear the stamp of an Oregon licensed architect or engineer when required by the Building Code.

(5) Prior to approval of a license for a new or renovated setting, the applicant shall submit the following to the Division:

(a) One copy of written approval to occupy the setting issued by the city or county building codes authority having jurisdiction;

(b) One copy of the fire inspection report from the State Fire Marshal or local jurisdiction indicating that the setting complies with the Fire Code;

(c) When the setting is not served by an approved municipal water system, one copy of the documentation indicating that the state or county health agency having jurisdiction has tested and certified safe the water supply in accordance with OAR chapter 333, Health Services rules to public water systems;

(d) When the setting is not connected to an approved municipal sewer system, one copy of the sewer or septic system approval from the Department of Environmental Quality or local jurisdiction.

(6) The following fees shall be submitted with an initial or renewal application:

(a) The RTF license application fee for initial or renewal licensing is \$60. No fee is required in the case of a governmentally operated RTF.

(b) The RTH license application fee for initial or renewal licensing is \$30. No fee is required in the case of a governmentally operated RTH.

(7) A license is renewable upon submission of a renewal application in the form or format required by the Division and a non-refundable fee as set out in section (6), except that no fee shall be required of a governmentally operated program:

(a) Filing of an application for renewal 60 days before the date of expiration extends the effective date of the current license until the Division takes action upon the renewal application;

(b) The Division shall deny renewal of a license if the program is not in substantial compliance with these rules or if the State Fire Marshal or authorized representative has given notice of noncompliance.

(8) Upon receipt of an application and fee, the Division shall conduct an application review. Initial action by the Division on the application shall begin within 30 days of receipt of all application materials. The review shall:

(a) Include a complete review of application materials;

(b) Determine whether the applicant meets the qualifications outlined in ORS 443.420 including:

(A) Demonstrates an understanding and acceptance of these rules;

(B) Is mentally and physically capable of providing services for individuals;

(C) Employs or utilizes only persons whose presence does not jeopardize the health, safety, or welfare of individuals; and

(D) Provides evidence satisfactory to the Division of financial ability to comply with these rules.

(c) Include a site inspection; and

(d) Conclude with a report stating findings and a decision on licensing of the program.

(9) Findings of Noncompliance. The provider shall submit and complete a plan of correction for each finding of noncompliance:

(a) If the findings of noncompliance substantially impact the welfare, health, and safety of individuals, the provider shall submit a plan of correction that shall be approved by the Division prior to issuance of a license. In the case of a currently operating program, the findings may result in suspension or revocation of a license;

(b) If it is determined that the findings of noncompliance do not threaten the welfare, health, or safety of individuals and the program meets other requirements of licensing, the Division may issue or renew a license with the plan of correction submitted and completed as a condition of licensing;

(c) The Division shall specify required documentation and set the time lines for the submission and completion of plans of correction in accordance with the severity of the findings;

(d) The Division shall review and evaluate each plan of correction. If the plan of correction does not adequately remedy the findings of noncompliance, the Division shall require a revised plan of correction and may apply civil penalties or deny, revoke, or suspend the license;

(e) The provider owner may appeal the finding of noncompliance or the disapproval of a plan of correction by submitting a request for reconsideration in writing to the Division. The Division shall make a decision on

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the appeal within 30 days of receipt of the appeal. The decision of the Division shall be final.

(10) The Division, in its discretion, may grant a variance to these rules based upon a demonstration by the applicant or provider that an alternative method or different approach provides equal or greater program effectiveness and does not adversely impact the welfare, health, or safety of individuals:

(a) The provider seeking a variance shall submit in writing an application to the Division that identifies the section of the rules from which the variance is sought, the reason for the proposed variance, the proposed alternative method or different approach, and signed documentation from the CMHP indicating approval of the proposed variance;

(b) The director or designee shall review and approve or deny the request for a variance;

(c) The Division shall notify the provider of the decision in writing within 30 days after receipt of the request. A variance may be implemented only after receipt of written approval from the Division;

(d) The provider may appeal the denial of a variance request by submitting a request for reconsideration in writing to the Division's Director. The Director shall make a decision within 30 days of receipt of the appeal. The decision of the Director shall be final; and

(e) A variance shall be reviewed by the Division at least every two years and may be revoked or suspended based upon a finding that the variance adversely impacts the welfare, health, or safety of the individuals.

(11) Upon finding that the applicant is in substantial compliance with these rules, the Division shall issue a license:

(a) The license issued shall state the name of the provider, the name of the program administrator, the address of the setting to which the license applies, the maximum number of individuals to be served at any one time and their evacuation capability, the type of program, and such other information as the Division deems necessary;

(b) A program license shall be effective for two years from the date issued unless sooner revoked or suspended; and

(c) A program license is not transferable or applicable to any setting, location, or management other than that indicated on the application and license.

(12) The license shall be valid only under the following conditions:

(a) The provider may not operate or maintain the program in combination with a nursing facility, hospital, retirement facility, or other occupancy unless licensed, maintained, and operated as a separate and distinct part. Each program shall have sleeping, dining, and living areas for use only by its own individual's caregivers and invited guests;

(b) The provider shall maintain the license posted in the setting and available for inspection at all times; and

(c) A license becomes void immediately upon suspension or revocation of the license by the Division or if the operation is discontinued by voluntary action of the provider or if there is a change of ownership.

(13) Division staff shall visit and inspect every setting at least once every two years to determine whether it is maintained and operated in accordance with these rules. The provider or applicant shall allow Division staff entry and access to the setting and individuals for the purpose of conducting the inspections:

(a) Division staff shall review methods of individual care and treatment, records, the condition of the setting and equipment, and other areas of operation;

(b) All records, unless specifically excluded by law, shall be available to the Division for review; and

(c) The State Fire Marshal or authorized representatives shall, upon request, be permitted access to the setting, fire safety equipment within the setting, safety policies and procedures, maintenance records of fire protection equipment and systems, and records demonstrating the evacuation capability of setting occupants.

(14) Incidents of alleged abuse covered by ORS 430.735 through 430.765 and reported complaints shall be investigated in accordance with OAR 943-045-0250 through 0370. The Division may delegate the investigation to a CMHP or other appropriate entity.

(15) The Division may deny, suspend, or revoke a license when it finds there has been substantial failure to comply with these rules or when the State Fire Marshal or authorized representative certifies that there is failure to comply with the Fire Code:

(a) In cases where there exists an imminent danger to the health or safety of an individual or the public, a license may be suspended immediately; and

(b) The revocation, suspension, or denial shall be done in accordance with ORS 443.440

(16) The provider shall report promptly to the Division any significant changes to information supplied in the application or subsequent correspondence. Changes include but are not limited to changes in the setting or program name, provider, program administrator, telephone number, and mailing address. Changes also include but are not limited to changes in the physical nature of the setting, policies and procedures, or staffing pattern when the changes are significant or impact the individual's health, safety, or well-being.

(17) Enforcement of Home and Community-Based Services and Settings Requirements:

(a) All programs licensed on or after July 1, 2016, shall be in full compliance with all regulatory requirements under these rules at the time of initial licensure;

(b) All programs licensed prior to July 1, 2016, shall come into compliance with rules as follows:

(A) All programs shall be in full compliance with these rules no later than January 1, 2017; and

(B) For the rules designated by the Division to become effective July 1, 2016, the provider shall make measureable progress towards compliance with those rules. The Division may not issue sanctions and penalties for failure to meet the rules effective July 1, 2016, or the obligations imposed by OAR Chapter 411, division 4 until January 1, 2017, if the provider is making measureable progress towards compliance.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

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 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17; MHS 5-2017, f. & cert. ef. 6-8-17

309-035-0120

Contracts and Rates

(1) A provider receiving service payments shall enter into a contract with the local CMHP, statewide coordinated care organizations, the Division, or other Division-approved party. The contract does not guarantee that any number of individuals eligible for Division funded services shall be referred to or maintained in the program.

(2) The provider shall specify in a fee policy and procedure rates for all services and the procedures for collecting payments from individuals and payees. The fee policy and procedures shall describe the schedule of rates, conditions under which rates may be changed, acceptable methods of payment, and the policy on refunds at the time of termination of residency:

(a) For individuals whose services are funded by the Division, reimbursement for services shall be made according to the rate schedule outlined in the contract. Room and board payments for individuals receiving Social Security benefits or public assistance shall be in accordance with rates determined by the Division;

(b) For private paying individuals, the program shall enter into a signed agreement with the individual, and, if applicable, the individual's designated representative. This agreement shall include but is not limited to a description of the services to be provided, the schedule of rates, conditions under which the rates may be changed, and policy on refunds at the time of termination of residency; and

(c) Before increasing rates or modifying payment procedures, the program shall provide a 30-day advance notice of the change to all individuals, representatives, payees, guardians, or conservators.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

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 4-2008, f. & cert. ef. 6-12-08; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17; MHS 5-2017, f. & cert. ef. 6-8-17

309-035-0125

Administrative Management

(1) The provider shall ensure that the program and setting are maintained and operated in compliance with these rules and all other applicable federal, state, and local laws and regulations.

(2) The provider shall employ a program administrator who meets the following qualifications and complies with the following standards:

(a) Background including special training, experience, and other demonstrated ability in providing care and treatment appropriate to the individuals served in the program;

(b) Documented approved criminal record checks processed in compliance with the procedures required by OAR 943-007-0001 through 0501 and no history of abusive behavior;

(c) Ensure that the program operates in accordance with the standards outlined in these rules;

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(d) Oversee the daily operation and maintenance of the program and shall be available to perform administrative duties at the setting at least 20 hours per week;

(e) Develop and administer written policies and procedures to direct the operation of the program and the provision of services to individuals;

(f) Ensure that qualified program staff are available in accordance with the staffing requirements specified in these rules;

(g) Supervise or provide for the supervision of program staff and others involved in the operation of the program;

(h) Maintain setting, personnel, and individual service records;

(i) Report regularly to the provider on the operation of the program; and

(j) Delegate authority and responsibility for the operation and maintenance of the program to a responsible staff person whenever the program administrator is absent from the setting. This authority and responsibility may not be delegated to an individual.

(3) The provider shall develop and update policies and procedures and maintain a copy in a location easily accessible for staff reference and made available to others upon reasonable request. They shall be consistent with requirements of these rules and shall address at a minimum the following:

(a) Personnel practices and staff training;

(b) Individual screening, admission, and termination;

(c) Fire drills, emergency procedures, individual safety and abuse reporting;

(d) Health and sanitation;

(e) Records maintenance and confidentiality;

(f) Residential service plan, services, and activities;

(g) Behavior management including the use of seclusion or restraints;

(h) Food Service;

(i) Medication administration and storage;

(j) Individual belongings, storage, and funds;

(k) Individual rights and advance directives;

(l) Complaints and grievances;

(m) Setting maintenance;

(n) Evacuation capability determination; and

(o) Fees and money management.

(4) The provider shall develop reasonable house rules outlining operating protocols concerning, but not limited to, meal times, night-time quiet hours, guest policies, smoking, and as follows:

(a) House rules shall be consistent with individual rights as set forth in OAR 309-035-0175;

(b) House rules shall be posted in an area readily accessible to individuals;

(c) House rules shall be reviewed and updated as necessary;

(d) Individuals shall be provided an opportunity to review and provide input into any proposed changes to house rules before the revisions become effective; and

(e) Effective July 1, 2016, house rules may not restrict or limit the program qualities identified in OAR 309-035-0110.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.460 & 443.991

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef.; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05; MHS 4-2008, f. & cert. ef. 6-12-08; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17; MHS 5-2017, f. & cert. ef. 6-8-17

309-035-0130

Records

(1) Records shall be maintained to document the legal operation of the program, personnel practices, and individual services and supports. All records shall be properly obtained, accurately prepared, safely stored, and readily available or electronically accessible within the setting. All entries in records required by these rules shall be in ink, indelible pencil, or approved electronic equivalent prepared at the time or immediately following the occurrence of the event being recorded; be legible; and be dated and signed by the person making the entry. In the case of electronic records, signatures may be replaced by an approved, uniquely identifiable electronic equivalent.

(2) Records documenting the legal operation of the program shall include but not limited to:

(a) Written approval for occupancy of the setting by the county or city having jurisdiction, any building inspection reports, zoning verifications, fire inspection reports, or other documentation pertaining to the safe and sanitary operation of the program issued during the development or operation of the program;

(b) Application for license, related correspondence, and site inspection reports;

(c) Program operating budget and related financial records;

(d) Payroll records, program staff schedules and time sheets;

(e) Materials safety and data sheets;

(f) Fire drill documentation;

(g) Fire alarm and sprinkler system maintenance and testing records;

(h) Incident reports; and

(i) Policy and procedure manual.

(3) Personnel records shall document and include:

(a) Job descriptions for all positions; and

(b) Separate program staff records including, but not limited to, written documentation of program staff identifying information and qualifications, criminal record clearance, T.B. test results, documentation that Hepatitis B inoculations have been given or made available, performance appraisals, and documentation of pre-service orientation and other training.

(4) Individual service records shall be maintained for each individual and include:

(a) An easily accessible summary sheet that includes, but is not limited to, the individual's name, previous address, date of admission to the program, gender, biological sex, date of birth, marital status, legal status, religious preference, health provider information, evacuation capability, DSM diagnosis, physical health diagnosis, medication allergies, food allergies, information indicating whether advance mental health and health directives and burial plan have been executed, and the name of individuals to contact in case of emergency;

(b) The names, addresses, and telephone numbers of the individual's representative, legal guardian or conservator, parents, next of kin, or other significant persons; physicians or other medical practitioners; dentist; case manager or therapist; day program, school, or employer; and any governmental or other agency representatives providing services to the individual;

(c) A mental health assessment and background information identifying the individual's residential service needs;

(d) Advance mental health and medical health directives, burial plans, or location of these;

(e) A residential service plan and copy of plans from other service providers;

(f) Effective July 1, 2016, and pursuant to OAR 309-035-0115(17), a person-centered service plan;

(g) Documentation of the individual's progress and any other significant information including, but not limited to, progress notes, progress summaries, any use of seclusion or restraints, and correspondence concerning the individual; and

(h) Health-related information and up-to-date information on medications.

(5) The program shall retain all referral packets, screening materials, and screening responses-placement determinations for a minimum of three years from the date of the referral.

(6) For an individual receiving crisis-respite services, the provider shall obtain and maintain records as outlined in these rules. Because it may not be possible to obtain and maintain complete records during a crisis-respite stay, the program shall, at a minimum, maintain records that are deemed reasonable to provide services in the program.

(7) All individual service records shall be stored in a weatherproof and secure location. Access to records shall be limited to the program administrator and direct care staff unless otherwise allowed in these rules.

(8) All individual service records shall be kept confidential as required by law. A signed release of information shall be obtained for any disclosure from an individual service record in accordance with all applicable laws and rules.

(9) An individual or the representative shall be allowed to review and obtain a copy of the individual service record as required by ORS 179.505(9).

(10) Pertinent information from records of an individual being transferred to another facility shall be transferred with the individual. A signed release of information shall first be obtained in accordance with applicable laws and rules.

(11) The program shall keep all records, except those transferred with an individual, for a period of three years.

(12) If a program changes ownership or program administrator, all individual and personnel records shall remain at the setting. Prior to the dissolution of any program, the program administrator shall notify the Division in writing as to the location and storage of individual service records or those records shall be transferred with the individual.

(13) If an individual or representative disagrees with the content of the individual service record, or otherwise desires to provide documenta-

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tion for the record, the individual or representative may provide material in writing that then shall become part of the individual service record.

(14) The program shall establish an individual service record upon the individual's admission. Prior to admission, within five days after an emergency admission, or within 24 hours of a crisis-respite admission, the program shall determine with whom communication needs to occur and make good faith efforts to obtain the needed authorizations for release of information. The record established upon admission shall include the materials reviewed in screening the individual, the summary sheet, and any other available information. The program shall make every effort to complete the individual service record in a timely manner. The assessment and residential service plan shall be completed in accordance with OAR 309-035-0185. Records on prescribed medications and health needs shall be completed as outlined in OAR 309-035-0215.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

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 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17; MHS 5-2017, f. & cert. ef. 6-8-17

309-035-0135

Staffing

(1) The provider shall maintain a written job description for each staff position that specifies the position's qualifications and job duties:

(a) A direct care staff person shall be at least 18 years of age, be capable of implementing the setting's emergency procedures and disaster plan, and be capable of performing other duties of the job as described in the job description;

(b) All program staff having contact with an individual must have a documented approved criminal record clearance in accordance with OAR 943-007-0001 through 943-007-0501. The provider must maintain documentation of approved criminal records clearance for each applicable staff person;

(c) Program staff who will have contact with individual's must be tested for tuberculosis within two weeks of first employment; additional testing shall take place as deemed necessary; and the employment of program staff who test positive for tuberculosis shall be restricted if necessary; and

(d) All program staff shall meet other qualifications when required by a contract or financing arrangement approved by the Division.

(2) Personnel policies shall be made available to all program staff and shall describe hiring, leave, promotion, and disciplinary practices.

(3) The program administrator shall provide or arrange a minimum of 16 hours pre-service orientation and eight hours in-service training annually for each program staff including:

(a) Pre-service training for direct care staff shall include but not limited to a comprehensive tour of the setting; a review of emergency procedures developed in accordance with OAR 309-035-0145; a review of setting house rules, policies, and procedures; background on mental and emotional disorders; an overview of individual rights; medication management procedures; food service arrangements; a summary of each individual's assessment and residential service plan; and other information relevant to the job description and scheduled shifts; and

(b) In-service training shall be provided on topics relevant to improving the care and treatment of individuals in the program and meeting the requirements in these administrative rules. In-service training topics include, but are not limited to, implementing the residential service plan, behavior management, daily living skills development, nutrition, first aid, understanding mental illness, sanitary food handling, individual rights, identifying health care needs, and psychotropic medications.

(4) The provider and program administrator shall ensure that an adequate number of program and direct care staff are available at all times to meet the treatment, health, and safety needs of individuals. Program staff must be scheduled to meet the changing needs and ensure safety of individuals. Minimum staffing requirements are as follows:

(a) In RTHs serving one to five individuals, there shall be at least one direct care staff on duty at all times;

(b) In RTFs serving six to 16 individuals, there shall be at least one direct care staff on duty at all times;

(c) In the case of a specialized program, staffing requirements outlined in the contractual agreement for specialized services shall be implemented;

(d) Class I and Class II SRTFs shall ensure staffing levels meet the requirements set forth in chapter 309, divisions 32 and 33; and

(e) Program and direct care staff on night duty shall be awake and dressed at all times. In settings where individuals are housed in two or more

detached buildings, program staff shall monitor each building at least once an hour during the night shift. An approved method for alerting program staff to problems shall be in place and implemented. This method shall be accessible to and usable by the individuals.

Stat. Auth.: ORS 413.042 & 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

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 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17; MHS 5-2017, f. & cert. ef. 6-8-17

309-035-0140

Setting Requirements

(1) The provider shall ensure that the setting meets the requirements for approved Group SR or I occupancies in the Building Code and the Fire Code in effect at the time of original licensure. When a change in setting use results in a new building occupancy classification, the program's setting shall meet the requirements for approved Group SR or I occupancies in the Building Code in effect at the time of such change. If occupants are capable of evacuation within three minutes, refer to Group R occupancies.

(2) Programs shall be accessible as follows:

(a) Those settings or portions of settings that are licensed, constructed, or renovated after January 26, 1992, and that are covered multi-family dwellings or public accommodations shall meet the physical accessibility requirements in chapter 11 of the Oregon Structural Specialty Codes. These codes specify requirements for public accommodations as defined in the Americans with Disabilities Act under Title III and for buildings qualifying as multi-family dwellings as defined in the Fair Housing Act as amended in 1988;

(b) In order to ensure program accessibility under Title II of the Americans with Disabilities Act, the Division may require additional accessibility improvements; and

(c) Any accessibility improvements made to accommodate an identified individual shall be in accordance with the specific needs of the individual.

(3) An accessible outdoor area is required and shall be made available to all individuals. For programs or portions thereof licensed on or after June 1, 1998, a portion of the accessible outdoor area shall be covered and have an all-weather surface such as a patio or deck.

(4) The setting shall have sufficient and safe storage areas that include but not limited to:

(a) Storage for a reasonable amount of individual belongings beyond that available in the individual's unit shall be provided appropriate to the size of the setting;

(b) All maintenance equipment including yard maintenance tools shall be maintained in adequate storage space. Equipment and tools that pose a danger to individuals shall be kept in locked storage; and

(c) Storage areas necessary to ensure a functional, safe, and sanitary environment consistent with OAR 309-035-0140 through 0155 and 309-035-0210 through 0215.

(5) For programs initially licensed on or after June 1, 1998, all individual use areas and individual units shall be accessible through temperature controlled common areas or hallways with a minimum width of 36 inches except that a minimum width of 48 inches shall be provided along the route to accessible bedrooms and bathrooms and between common areas and required exits.

(6) The setting shall have sufficient space for confidential storage of both individual service records and business records, for program staff use in completing record-keeping tasks, and for a telephone. Other equipment including fire alarm panels and other annunciators shall be installed in an area readily accessible to staff in accordance with the Fire Code.

(7) The provider shall provide a unit for each individual, although the program may maintain units to be shared by more than one individual consistent with these rules. The unit shall include sleeping accommodations for the individual and be separated from other areas of the setting by an operable door with an approved latching device. The provider shall maintain units as follows:

(a) For programs licensed prior to June 1, 1998, units shall be a minimum of 60 square feet per resident and allow for a minimum of three feet between beds;

(b) For programs or portions thereof initially licensed on or after June 1, 1998, units shall be limited to one or two individuals. At least ten percent of units, but no less than one unit, shall be accessible for individuals with mobility disabilities. All units shall include a minimum of 70 square feet per individual exclusive of closets, vestibules, and bathroom facilities and allow a minimum of three feet between beds;

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(c) The provider shall provide a lockable entrance door to each unit for the individual's privacy as follows:

(A) The locking device shall release with a single-action lever on the inside of the room and open to a hall or common-use room;

(B) The provider shall provide each individual with a personalized key that operates only the door to his or her unit from the corridor side;

(D) The provider shall maintain a master key to access all of the units that is easily and quickly available to the provider, program administrator, and appropriate program staff;

(E) The provider may not disable or remove a lock to a unit without obtaining consent from the individual or the individual's representative through the individually-based limitations process outlined in OAR 309-035-0195; and

(F) Section (7) of these rules are effective July 1, 2016 and enforceable as described in OAR 309-035-0115(17).

(d) A clothes closet with adequate clothes hanging rods shall be accessible within each unit for storage of each individual's clothing and personal belongings. For programs initially licensed on or after June 1, 1998, built-in closet space shall be provided totaling a minimum of 64 cubic feet for each individual. In an accessible unit, the clothes hanging rod height shall be adjustable or no more than 54 inches in height to ensure accessibility for an individual using a wheelchair; and

(e) Each unit shall have exterior windows with a combined area at least one-tenth of the floor area of the room. Unit windows shall be equipped with curtains or blinds for privacy and light control. For programs or portions of programs initially licensed on or after June 1, 1998, an escape window shall be provided consistent with building code requirements.

(8) Bathing and toilet facilities shall be conveniently located for individual use, provide permanently wired light fixtures that illuminate all parts of the room, provide individual privacy for individuals, provide a securely affixed mirror at eye level, be adequately ventilated, and include sufficient facilities specially equipped for use by individuals with a physical disability in buildings serving such individuals:

(a) In programs licensed prior to June 1, 1998, a minimum of one toilet and one lavatory shall be available for each eight individuals, and one bathtub or shower shall be available for each ten individuals; and

(b) In programs or portions of programs initially licensed on or after June 1, 1998, a minimum of one toilet and one lavatory shall be available for each six individuals, and a minimum of one bathtub or shower shall be available for each ten individuals, when these fixtures are not available in units. At least one centralized bathroom along an accessible route shall be designed for disabled access in accordance with Chapter 11 of the Oregon Structural Specialty Code.

(9) The setting shall include lounge and activity areas for social and recreational use by individuals, program staff and invited guests totaling no less than 15 square feet per individual.

(10) Laundry facilities shall be separate from food preparation and other individual use areas. When residential laundry equipment is installed, the laundry facilities may be located to allow for both individual and staff use. In programs initially licensed on or after June 1, 1998, separate residential laundry facilities shall be provided when the primary laundry facilities are located in another building, are of commercial type, or are otherwise not suitable for individual use. The following shall be included in the primary laundry facilities:

(a) Countertops or spaces for folding tables sufficient to handle laundry needs for the facility;

(b) Locked storage for chemicals and equipment;

(c) Outlets, venting, and water hook-ups according to state building code requirements. Washers must have a minimum rinse temperature of 155 degrees Fahrenheit (160 degrees Fahrenheit recommended) unless a chemical disinfectant is used; and

(d) Sufficient storage and handling space to ensure that clean laundry is not contaminated by soiled laundry.

(11) Kitchen facilities and equipment in a setting may be of residential type except as required by the state building code and fire code or local agencies having jurisdiction. The setting's kitchen shall have the following:

(a) Dry storage space not subject to freezing in cabinets or a separate pantry for a minimum of one week's supply of staple foods;

(b) Sufficient refrigeration space for a minimum of two days' supply of perishable foods. The space shall be maintained at 45 degrees Fahrenheit or less and freezer space maintained at 0 degrees Fahrenheit or less;

(c) A dishwasher may be approved residential type with a minimum final rinse temperature of 155 degrees Fahrenheit (160 degrees recommended) unless chemical disinfectant is used;

(d) A separate food preparation sink and hand washing sink;

(e) Smooth, nonabsorbent and cleanable counters for food preparation and serving;

(f) Appropriate storage for dishes and cooking utensils designed to be free from potential contamination;

(g) Stove and oven equipment for cooking and baking needs; and

(h) Storage for a mop and other cleaning tools and supplies used for food preparation for dining and adjacent areas. Cleaning tools shall be maintained separately from those used to clean other parts of the setting.

(12) The setting shall have a separate dining room or an area where meals are served for use by individuals, employees, and guests:

(a) In programs licensed prior to June 1, 1998, the setting's dining area shall seat at least half of the individuals at one time with a minimum area of 15 square feet per individual; and

(b) In programs or portions of programs initially licensed on or after June 1, 1998, the setting's dining space shall seat all residents with a minimum area of 15 square feet per individual exclusive of serving facilities and required exit pathways.

(13) All details and finishes shall meet the finish requirements of applicable sections of the Building Code and the Fire Code as follows:

(a) Surfaces of all walls, ceilings, windows, and equipment shall be nonabsorbent and readily cleanable;

(b) The setting's, flooring, thresholds, and floor junctures shall be designed and installed to prevent a tripping hazard and to minimize resistance for passage of wheelchairs and other ambulation aids. In addition, hard surface floors and base shall be free from cracks and breaks, and bathing areas shall have non-slip surfaces;

(c) In programs or portions of programs initially licensed on or after June 1, 1998, all doors to units, bathrooms, and common use areas shall provide a minimum clear opening of 32 inches;

(d) In all programs:

(A) Lever type door hardware shall be provided on all doors used by individuals;

(B) Locks used on doors to individual units must be interactive to release with operation of the inside door handle and comply with the requirements established by OAR 309-035-0140(7)(c)(A)(B)(D)(E);

(C) Exit doors may not include locks that prevent evacuation except in accordance with building code and fire code requirements and with written approval of the Division; and

(D) An exterior door alarm or other acceptable system may be provided for security purposes and to alert staff when individuals or others enter or exit the setting.

(e) Handrails shall be provided on all stairways as specified in the Building Code.

(14) All areas of the setting shall be adequately ventilated and temperature controlled in accordance with the Mechanical and Building Code requirements:

(a) Each setting shall have and maintain heating equipment capable of maintaining a minimum temperature of 68 degrees Fahrenheit at a point three inches above the floor. During times of extreme summer heat, fans shall be made available when air conditioning is not provided;

(b) All toilet and shower rooms shall be adequately ventilated with a mechanical exhaust fan, window mounted exhaust fan, or central exhaust system that discharges to the outside;

(c) Where used, the design and installation of fireplaces, furnaces, wood stoves and boilers shall meet standards of the Oregon Mechanical Specialty Code and the Boiler Specialty Code, as applicable. Documentation of annual inspection noting safe and proper operation shall be maintained at the setting; and

(d) In individual-use areas, hot water temperatures shall be maintained within a range of 110 to 120 degrees Fahrenheit. Hot water temperatures in laundry and kitchen areas shall be at least 155 degrees Fahrenheit.

(15) All wiring systems and electrical circuits shall meet the standards of Oregon Electrical Specialty Code in effect on the date of installation, and all electrical devices shall be properly wired and in good repair. The provider shall ensure the following:

(a) When not fully grounded, circuits in individual use areas shall be protected by GFCI type receptacles or circuit breakers as an acceptable alternative;

(b) A sufficient supply of electrical outlets shall be provided to meet individual and staff needs;

(c) No more than one power strip may be utilized for each electrical outlet;

(d) Connecting power strips to one another or use of other outlet expansion devices is prohibited;

(e) Extension cord use in units and common use rooms is prohibited;

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(f) Lighting fixtures shall be provided in each individual unit and bathroom, switchable near the entry door and in other areas as required to meet task illumination; and

(g) Lighting fixtures that illuminate evacuation pathways shall be operable within ten seconds during a failure of the normal power supply and provide illumination for a period of at least two hours.

(16) All plumbing shall meet the Oregon Plumbing Specialty Code in effect on the date of installation, and all plumbing fixtures shall be properly installed and in good repair.

(17) The program shall provide adequate access to telephones for private use by individuals. The program shall not limit the hours of availability for phone use. A program may establish guidelines for fair and equal use of a shared telephone. Each individual or individual's representative shall be responsible for payment of long distance phone bills where the calls were initiated by the individual, unless other mutually agreed arrangements have been made.

(18) Smoking is not allowed within the setting including within buildings or on the grounds.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

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 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17; MHS 5-2017, f. & cert. ef. 6-8-17

309-035-0145

Safety

(1) The provider shall train all program staff in safety procedures prior to beginning their first regular shift. Every individual must be trained in individual safety procedures as soon as possible within the first 72 hours of residency.

(2) The program shall develop and implement a written procedure and disaster plan authorized by the State Fire Marshal or authorized representative. The plan shall cover such emergencies and disasters as fires, explosions, missing persons, accidents, earthquakes, and floods. The program shall post the plan by the phone and be immediately available to the program administrator and program staff. The plan shall include diagrams of evacuation routes, and these must be posted. The plan shall specify where staff and individuals will reside if the setting becomes uninhabitable. The program shall update the plan and shall include:

(a) Emergency instructions for employees;

(b) The telephone numbers of the local fire department, police department, the poison control center, the administrator, the administrator's designee, and other persons to be contacted in emergencies; and

(c) Instructions for the evacuation of individuals and employees.

(3) Noncombustible and nonhazardous materials shall be used whenever possible. When necessary to the operation of the facility, flammable and combustible liquids and other hazardous materials shall be safely and properly stored in clearly labeled, original containers in areas inaccessible to individuals in accordance with the Fire Code. Any quantities of combustible and hazardous materials maintained shall be the minimum necessary.

(4) Non-toxic cleaning supplies shall be used whenever available. Poisonous and other toxic materials shall be properly labeled and stored in locked areas distinct and apart from all food and medications.

(5) Evacuation capability categories are based upon the ability of the individuals and program staff as a group to evacuate the building or relocate from a point of occupancy to a point of safety. Buildings shall be constructed and equipped according to a designated evacuation capability for occupants. Categories of evacuation capability include "Impractical" (SR-2) or "Slow" (SR-1). The evacuation capability designated for the facility shall be documented and maintained in accordance with NFPA 101A:

(a) Only individuals assessed to be capable of evacuating in accordance with the designated facility evacuation capability shall be admitted to the program; and

(b) Individuals experiencing difficulty with evacuating in a timely manner shall be provided assistance from staff and offered environmental and other accommodations, as practical. Under such circumstances, the program shall consider increasing staff levels, changing staff assignments, offering to change the individual's room assignment, arranging for special equipment, and taking other actions that may assist the individual. The program shall assist individuals who still cannot evacuate the building safely in the allowable period of time and shall assist with transferring to another facility with an evacuation capability designation consistent with the individual's documented evacuation capability.

(6) The program shall ensure that every individual shall participate in an unannounced evacuation drill each month:

(a) At least once every three months, the program shall conduct a drill during individual sleeping hours between 10 p.m. and 6 a.m.;

(b) Drills shall be scheduled at different times of the day and on different days of the week with different locations designated as the origin of the fire for drill purposes;

(c) Any individual failing to evacuate within the established time limits shall be provided with special assistance and a notation made in the individual service record; and

(d) Written evacuation records shall be maintained for at least three years. They shall include documentation made at the time of the drill specifying the date and time of the drill, the location designated as the origin of the fire for drill purposes, the names of all individuals and staff present, the amount of time required to evacuate, notes of any difficulties experienced, and the signature of the staff person conducting the drill.

(7) All stairways, halls, doorways, passageways, and exits from rooms and from the building shall be unobstructed.

(8) The program shall provide and maintain one or more 2A10BC fire extinguishers on each floor in accordance with the Fire Code.

(9) Approved fire alarms and smoke detectors shall be installed according to Building Code and Fire Code requirements. These alarms shall be set off during each evacuation drill. The program shall provide appropriate signal devices for persons with disabilities who do not respond to the standard auditory alarms. All of these devices shall be inspected and maintained in accordance with the requirements of the State Fire Marshal or local agency having jurisdiction.

(10) The program shall install and maintain sprinkler systems compliant with the Building Code and maintained in accordance with rules adopted by the State Fire Marshal. The program shall maintain an automated sprinkler system as follows:

(a) Programs initially licensed prior to July 1, 2016, are not required to install or maintain a sprinkler system if one were not present at the time of initial licensure;

(b) The Division recommends that all programs licensed prior to July 1, 2016, install and maintain sprinkler systems;

(c) Any program initially licensed on or after July 1, 2016, shall have and maintain a sprinkler system.

(11) The Division may not issue any variances addressing sprinkler systems in programs licensed on or after July 1, 2016.

(12) First aid supplies shall be readily accessible to staff. All supplies shall be properly labeled.

(13) Portable heaters are a recognized safety hazard and may not be used.

(14) The provider shall develop and implement a safety program to identify and prevent the occurrence of hazards at the facility. Such hazards may include, but are not limited to, dangerous substances, sharp objects, unprotected electrical outlets, use of extension cords or other special plug-in adapters, slippery floors or stairs, exposed heating devices, broken glass, inadequate water temperatures, overstuffed furniture in smoking areas, unsafe ashtrays and ash disposal, and other potential fire hazards.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

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 4-2008, f. & cert. ef. 6-12-08; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17; MHS 5-2017, f. & cert. ef. 6-8-17

309-035-0150

Sanitation

(1) The water supply in the facility shall meet the requirements of the current rules of Oregon Health Services governing domestic water supplies and:

(a) A municipal water supply shall be utilized if available; and

(b) When the facility is not served by an approved municipal water system and the facility qualifies as a public water system according to OAR 333-061-0020(127) Oregon Health Services rules for public water systems, then the provider shall comply with the OAR Chapter 333 rules of the Oregon Health Services pertaining to public water systems. These include requirements that the drinking water be tested for total coliform bacteria at least quarterly and nitrate at least annually and reported to Oregon Health Services. For adverse test results, these rules require that repeat samples and corrective action be taken to assure compliance with water quality standards, public notice be given whenever a violation of the water quality standards occurs, and records of water testing be retained according to the Oregon Health Services requirements.

(2) All floors, walls, ceilings, windows, furniture, and equipment shall be kept in good repair, clean, sanitary, neat, and orderly.

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(3) Each bathtub, shower, lavatory, and toilet shall be kept clean, in good repair, and regularly sanitized.

(4) No kitchen sink, lavatory, bathtub, or shower shall be used for the disposal of cleaning waste water.

(5) Soiled linens and clothing shall be stored in an area or container separate from kitchens, dining areas, clean linens, clothing, and food.

(6) All necessary measures shall be taken to prevent rodents and insects from entering the setting. The provider shall take appropriate action to eliminate rodents or insects.

(7) The grounds of the setting shall be kept orderly and reasonably free of litter, unused articles, and refuse.

(8) Garbage and refuse receptacles shall be clean, durable, watertight, insect and rodent proof, and shall be kept covered with tight-fitting lids. All garbage and solid waste shall be disposed of at least weekly and in compliance with the current rules of the Department of Environmental Quality (DEQ).

(9) All sewage and liquid wastes shall be disposed of in a municipal sewage system where such facilities are available. If a municipal sewage system is not available, sewage and liquid wastes shall be collected, treated, and disposed of in compliance with the current rules of the DEQ. Sewage lines and septic tanks or other non-municipal sewage disposal systems shall be maintained in good working order.

(10) Biohazardous waste shall be disposed of in compliance with the rules of the DEQ.

(11) Precautions shall be taken to prevent the spread of infectious or communicable diseases as defined by the Centers for Disease Control and to minimize or eliminate exposure to known health hazards:

(a) Program staff shall employ universal precautions whereby all human blood and certain body fluids are treated if known to be infectious for HIV, HBV, and other blood borne pathogens.

(12) If pets or other household animals reside at the setting, sanitation practices shall be implemented to prevent health hazards:

(a) Animals shall be vaccinated in accordance with the recommendations of a licensed veterinarian. Documentation of vaccinations shall be maintained on the premises;

(b) Animals not confined in enclosures shall be under control and maintained in a manner that does not adversely impact individuals or others; and

(c) No live animal shall be kept or allowed in any portion of the setting where food is stored or prepared, except that aquariums and aviaries shall be allowed if enclosed so as not to create a public health problem.

Stat. Auth.: ORS 413.042 & 443.450

Stats. Implemented: ORS 443.400 - 443.465 & 443.991

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 4-2008, f. & cert. ef. 6-12-08; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17; MHS 5-2017, f. & cert. ef. 6-8-17

309-035-0155

Individual Furnishings

(1) The program shall permit an individual to use the individual's own furniture within space limitations of the individual's unit. Otherwise, furniture shall be provided or arranged for each individual, maintained in good repair, and include the following:

(a) A bed including a frame and a clean mattress and pillow;

(b) A private dresser or similar storage area for personal belongings that is readily accessible to the individual; and

(c) Locked storage for the individual's small, personal belongings. For programs initially licensed before June 1, 1998, this locked storage may be provided in a place other than the Individual's unit. The provider shall provide the individual with a key or other method to gain access to her locked storage space.

(2) The program shall provide linens for each individual and shall include the following:

(a) Sheets, pillowcase, other bedding appropriate to the season and the individual's comfort;

(b) Availability of a waterproof mattress or waterproof mattress cover; and

(c) Towels and washcloths.

(3) The provider shall assist each individual in obtaining personal hygiene items in accordance with individual needs. These shall be stored in a clean and sanitary manner and may be purchased with the individual's personal allowance. Personal hygiene items include, but are not limited to, a comb and hairbrush, a toothbrush, toothpaste, and menstrual supplies (if needed).

(4) The provider shall provide sufficient supplies of soap, shampoo, and toilet paper for all individuals.

(5) An adequate supply of furniture for individual use in living room, dining room, and other common areas shall be maintained in good condition.

Stat. Auth.: ORS 413.042 & 443.450

Stats. Implemented: ORS 443.400 - 443.465 & 443.991

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 5-2009, f. & cert. ef. 12-17-09; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17; MHS 5-2017, f. & cert. ef. 6-8-17

309-035-0163

Admission to Program

(1) The provider shall ensure the admission process includes the following:

(a) The provider shall specify in its admission policy and procedures the program staff responsible for each component of the admission information-gathering and decision-making process. The program shall allocate responsibilities to promote effective processing of referrals and admissions;

(b) The provider shall develop and implement admission policies and procedures that support a prospective individual's right to select and choose from available service settings when the individual meets medical necessity criteria;

(c) The provider shall support the individual's right to select a program by assisting the person-centered service plan coordinator in identifying and documenting program options in the person-centered service plan including providing information regarding program services and rates; and

(d) The provider may close admissions to the program when accepting an additional prospective individual may cause the program to exceed its reasonable waitlist. When admissions are closed, the provider is not required to accept referrals, conduct screenings, or evaluate admissions criteria as directed by these rules.

(2) Unless limited by contractual agreement with the Division or other Division-approved party, the program may accept referrals from a variety of sources.

(3) In accordance with ORS 179.505 and the 42 CFR, Part 2, the program shall obtain an authorization for the release of information for disclosure for any confidential information concerning a prospective individual.

(4) The provider shall consider an individual for admission without regard to race, color, sex or sexual orientation, except as may be limited by room arrangement, religion, creed, national origin, age, except under 18 years, familial status, marital status, source of income, or disability in addition to the mental health disorder.

(5) Prior to accepting an individual for admission to the program, the program administrator shall determine that the individual meets admission criteria including the following:

(a) The provider shall offer each individual referred for placement at the program an opportunity to participate in a screening interview prior to being accepted or denied placement at a program. The screening is intended to provide information about the program and the services available as well as to obtain information from the prospective individual, a relative, and agencies currently providing services to the individual sufficient to determine eligibility for admission and service needs; and

(b) The provider shall receive screening packets for each individual referred for placement. At a minimum, screening packets shall include:

(A) Written documentation that the prospective individual has or is suspected of having a mental health disorder;

(B) Background information including a mental health assessment, description of previous living arrangements, service history, behavioral issues, and service needs;

(C) Medical information including a brief history of any health conditions, documentation from a Licensed Medical Professional or other qualified health care professional of the individual's current physical condition, and a written record of any current or recommended medications, treatments, dietary specifications, and aids to physical functioning;

(D) Copies of documents or other documentation relating to guardianship, conservatorship, commitment status, advance directives, or any other legal restrictions;

(E) A copy of the prospective individual's most recent mental health treatment plan or in the case of an emergency or crisis-respite admission a summary of current mental health treatment involvement; and

(F) Documentation of the prospective individual's ability to evacuate the building consistent with the facility's designated evacuation capability and other concerns about potential safety risks.

(c) The provider shall ensure that screenings be conducted at the prospective program setting unless:

(A) Travel arrangements cannot be made due to inclement weather; or

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(B) The individual or representative requests a phone screening or screening at the individual's current location.

(d) The provider shall make contact with the referring agency for the purpose of scheduling a screening appointment within 48 hours of receipt of the referral packet;

(e) The provider shall coordinate with the referring agency to schedule a screening appointment to occur within 14 calendar days from the date of receipt of the referral packet;

(f) The provider shall provide the following to each individual referred for placement:

(A) Materials explaining conditions of residency;

(B) Services available to individuals residing in the program; and

(C) An opportunity to meet with a prospective roommate if the program uses a shared room model.

(g) The screening meeting shall include the program administrator, the prospective individual, and the individual's representative. With the prospective individual's consent, the meeting may also include family members, other representatives as appropriate, representatives of relevant service-providing agencies, and others with an interest in the individual's admission.

(6) If an individual is referred for emergency or crisis-respite admission, an amended or abbreviated screening process may be used to more quickly meet the needs of individuals seeking placement. Screening and admission information obtained may be less comprehensive than for regular admissions but shall be sufficient to determine that the individual meets admission criteria and that the setting and program is appropriate considering the individual's needs. The program shall document the reasons for incomplete information.

(7) Prior to admission, the provider shall evaluate and determine whether a prospective individual is eligible for admission based on the following criteria. The individual shall:

(a) Be assessed to have a mental health disorder or a suspected mental health disorder;

(b) Be at least 18 years of age;

(c) Not require continuous nursing care unless a reasonable plan to provide the care exists, the need for residential treatment supersedes the need for nursing care, and the Division approves the placement;

(d) Have evacuation capability consistent with the setting's SR occupancy classification; and

(e) Meet additional criteria required or approved by the Division through contractual agreement or condition of licensing.

(8) The provider may deny an individual admission to its program for the following reasons:

(a) Failure to meet admission criteria established by these rules;

(b) Inability to pay for services due to lack of presumed Medicaid eligibility or other funds;

(c) Documented instances of behaviors within the last 14 calendar days that would pose a reasonable and significant risk to the health, safety, and well-being of the individual or another individual, if the individual is admitted;

(d) Lack of availability of necessary services required to maintain the health and safety of the individual (no nursing, etc.) or lack of an opening at the setting; or

(e) Individual declines the offer for screening;

(9) The provider may not deny an individual admission to its program as follows:

(a) Prior to offering a face-to-face screening or other screening process as allowed by these rules; or

(b) Due to county of origin, responsibility, or residency.

(10) The provider's admission decision shall be made as follows:

(a) The program's decision shall be based on review of screening materials, information gathered during the face-to-face screening meeting, and evaluation of the admission criteria;

(b) The program shall inform the prospective individual and the individual's representative of the admission decisions within 72 hours of the screening meeting;

(c) When the program denies admission, the program shall inform the applicant, the individual's representative, and the referring entity in writing of the basis for the decision and the individual's right to appeal the decision;

(d) When the program approves admission, the program shall inform the applicant, the individual's representative, and the referring entity through an acceptance notification that shall include:

(A) When not waitlisted or first on the waitlist, an estimated date of admission;

(B) When waitlisted, the number on the waitlist.

(11) Management of waitlists includes the following:

(a) The program shall establish admissions waitlists of reasonable length;

(b) The program shall document actions taken in the management of the waitlist;

(c) The program shall contact a waitlisted individual, the individual's representative, and the referring entity monthly to determine if the individual has been placed elsewhere;

(d) The program shall prioritize admissions on a waitlist as follows:

(A) The program shall give first priority to those individuals under current civil commitment or under the jurisdiction of the Psychiatric Security Review Board and seeking to transition from the Oregon State Hospital or other hospital level of care into the community;

(B) The program shall give second priority for admission to individuals seeking admission to programs as an alternative to or to prevent civil commitment or placement at the Oregon State Hospital or for the purpose of transitioning from a program or a secure residential treatment facility;

(e) The program shall determine priority for admission based on the priorities described above and on a first-come first-served basis. The program may not take into account the individual's county of origin, responsibility, or residency;

(f) Within 72 hours of a provider learning of a pending opening, the program shall notify the first individual on the waitlist, the individual's representative, and the referring entity of the expected opening. The individual shall respond within three business days of the provider's notification. If any of the following occurs, the program may offer the opening to the next individual on the wait list:

(A) The program receives no response from the individual, the individual's representative, or the referring entity within three business days;

(B) The individual will not be ready to transition into the program within one week; or

(C) The individual no longer desires placement at the program.

(12) The program shall obtain informed consent for services from the individual or representative prior to admission to the program unless the individual's ability to consent is legally restricted.

(13) Upon admission, the program administrator shall provide and document an orientation to each new individual that includes, but is not limited to, the following:

(a) A complete tour of the setting;

(b) Introductions to other individuals and program staff;

(c) Discussion of house rules;

(d) Explanation of the laundry and food service schedule and policies;

(e) Review of the individual's rights;

(f) Review of grievance procedures;

(g) Completion of a residency agreement;

(h) Discussion of the conditions under which residency would be terminated;

(i) General description of available services and activities;

(j) Review and explanation of advance directives. If the individual does not already have any advance directives, the program shall provide an opportunity to complete advanced directives;

(k) Emergency procedures in accordance with OAR 309-035-0145(2);

(L) Review of the person-centered planning process; and

(m) Review of the process for imposing individually-based limitations on certain program obligations to the individual.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

Hist.: MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17; MHS 5-2017, f. & cert. ef. 6-8-17

309-035-0165

Residency Agreement

This rule becomes effective July 1, 2016, and enforceable as described in OAR 309-035-0115(17).

(1) The provider shall enter into a written residency agreement with each individual or representative and be admitted to the program consistent with the following procedures:

(a) The written residency agreement shall be signed by the program administrator and the individual or representative prior to or at the time of admission;

(b) The provider shall provide a copy of the signed agreement to the individual or representative, and the provider shall retain the original signed agreement in the individual's service record;

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(c) The provider shall give written notice to an individual or representative at least 30 calendar days prior to any general rate increases, additions, or other modifications of the rates; and

(d) The provider shall update residency agreements at least annually and also when social security rates change or an individual's finances change such that the amount paid for room and board changes.

(2) The residency agreement shall include, but is not limited to, the following:

(a) The room and board rate describing the estimated public and private pay portions of the rate:

(A) When an individual's social security or other funding is not active at the time of admission to the program, the program shall prepare the room and board agreement based upon the estimated benefit to be received by the individual; and

(B) If, when funding is later activated, actual income of the individual varies from the estimated income noted on the residency agreement, the agreement shall be updated and resigned by all the applicable parties.

(b) Services and supports provided in exchange for payment of the room and board rate;

(c) Conditions under which the program may change the rates;

(d) The provider's refund policy in instances of an individual's hospitalization, death, transfer to a nursing facility or other care facility, and voluntary or involuntary move from the program;

(e) A statement indicating that the individual is not liable for damages considered normal wear and tear;

(f) The program's policies on voluntary moves and whether written notification of a non-Medicaid individual's intent to not return is required;

(g) The potential reasons for involuntary termination of residency in compliance with this rule and individual's rights regarding the eviction and appeal process as described in OAR 309-035-0183(3);

(h) Any policies the program may have on the presence and use of alcohol, cannabis, and illegal drugs of abuse;

(i) Policy regarding tobacco smoking in compliance with the Tobacco Freedom Policy established by the Division;

(j) Policy addressing pet and service animals. The program may not restrict animals that provide assistance or perform tasks for the benefit of a person with a disability. These animals are often referred to as service animals, assistance animals, support animals, therapy animals, companion animals, or emotional support animals;

(k) Policy regarding the presence and use of legal medical and recreational marijuana at the setting;

(L) The provider may not schedule meals with more than a 14-hour span between the evening meal and the following morning's meal (see, OAR 411-050-0645);

(m) Policy regarding refunds for residents eligible for Medicaid services, including pro-rating partial months and if the room and board payment is refundable;

(n) Any house rules or social covenants required by the program that may be included in the document or as an addendum;

(o) Statement informing the individual of the freedoms authorized by 42 CFR 441.301(c)(2)(xiii) & 42 CFR 441.530(a)(1)(vi)(F) that may not be limited without the informed, written consent of the individual or the legal representative and include the right to the following:

(A) Live under a legally enforceable agreement with protections substantially equivalent to landlord-tenant laws;

(B) The freedom and support to access food at any time;

(C) To have visitors of the individual's choosing at any time;

(D) Have a lockable door in the individual's unit that may be locked by the individual;

(E) Choose a roommate when sharing a unit;

(F) Furnish and decorate the individual's unit according to the Residency Agreement;

(G) The freedom and support to control the individual's schedule and activities; and

(H) Privacy in the individual's unit.

(3) The provider may not propose or enter into a residency agreement that:

(a) Charges or asks for application fees, refundable deposits, or non-refundable deposits;

(b) Includes any illegal or unenforceable provisions or ask or require an individual to waive any of the individual's rights or the provider's liability for negligence; or

(c) Conflicts with individual rights or these rules.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

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 4-2008, f. & cert. ef. 6-12-08; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17; MHS 5-2017, f. & cert. ef. 6-8-17

309-035-0170

Termination of Residency

(1) Each provider's termination policy and procedure shall designate the program staff responsible for each step of the process for terminating residency. The provider shall designate responsibilities organized and assigned to promote a fair and efficient termination process. Unless otherwise designated as a condition of licensing or in contract language approved by the Division, the program administrator shall be responsible for initiating and coordinating termination proceedings. The provider shall make reasonable efforts to prevent unnecessary terminations by making reasonable accommodations within the program and setting.

(2) A resident or guardian may terminate residency in a facility upon providing at least 30-days' notice. Upon mutual agreement between the administrator and the resident or guardian, less than 30 days' notice may be provided.

(3) If an individual's behavior poses a serious and immediate threat to the health or safety of others in or near the program or setting, the program administrator after providing 24 hours written notice to the individual or representative specifying the causes may immediately terminate the residency. The notice shall specify the individual's right to appeal the emergency termination decision in accordance with OAR 309-035-0183(3).

(4) When other circumstances arise providing grounds for termination of residency under this section, the program administrator shall discuss these grounds with the individual, or representative, and with the individual's permission other individuals with an interest in the individual's circumstances. If a decision is made to terminate residency, the program administrator shall provide at least 30 days' written notice specifying the causes to the individual or representative. This notice shall also specify the individual's right to appeal the termination decision in accordance with OAR 309-035-0183(3). Upon mutual agreement between the program administrator and the individual's representative, termination may occur with less than 30 days' notice. The program shall make reasonable efforts to establish a reasonable termination date in consideration of both the program's needs and the individual's need to find alternative living arrangements. Grounds for termination include the following:

(a) The individual no longer needs or desires services provided by the program and expresses a desire to move to an alternative setting;

(b) The individual is assessed by a Licensed Medical Professional or other qualified health professional to require services such as continuous nursing care or extended hospitalization that are not available or cannot be reasonably arranged at the facility;

(c) The individual's behavior is continuously and significantly disruptive or poses a threat to the health or safety of self or others, and these behavioral concerns cannot be adequately addressed with services available at the setting or services that can be arranged outside of the program setting;

(d) The individual cannot safely evacuate the setting in accordance with the setting's SR Occupancy Classification after efforts described in OAR 309-035-0145(5)(b) have been taken;

(e) Nonpayment of fees in accordance with program's fee policy; and

(f) The individual continuously and knowingly violates house rules resulting in significant disturbance to others.

(5) Except in the case of emergency terminations or crisis-respite services, a pre-termination meeting shall be held with the individual, the individual's representative, and with the individual's permission, others interested in the individual's circumstances. The purpose of the meeting is to plan any arrangements necessitated by the termination decision. The meeting shall be scheduled to occur at least two weeks prior to the termination date. In the event a pre-termination meeting is not held, the reason shall be documented in the individual service record.

(6) Documentation of discussions and meetings held concerning termination of residency and copies of notices shall be maintained in the individual service record.

(7) At the time of termination of residency the individual shall be given a statement of account, any balance of funds held by the program, and all property held in trust or custody by the program as in the following:

(a) In the event of pending charges, the program may withhold the amount of funds anticipated to cover the pending charges. Within 30 days after residency is terminated or as soon as pending charges are confirmed, the program shall provide the individual with a final financial statement along with any funds due to the individual; and

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(b) In the case of an individual's property being left at the setting for longer than seven days after termination of residency, the program shall make a reasonable attempt to contact the individual or representative. The program shall allow the individual or representative at least 15 days to make arrangements concerning the property. If the program determines that the individual has abandoned the property, the program may then dispose of the property. If the property is sold, proceeds of the sale minus the amount of any expenses incurred and any amounts owed the program by or on behalf of the individual shall be forwarded to the individual or representative.

(8) Because crisis-respite services are time-limited, the planned end of services may not be considered a termination of residency and subject to requirements in OAR 309-035-0170(2)(4)(5). Upon admission to crisis-respite services the individual or individual's representative shall be informed of the planned date for discontinuation of services. This date may be extended through mutual agreement between the program administrator and the individual or representative. A program providing crisis-respite services shall implement policies and procedures that specify reasonable time frames and the grounds for discontinuing crisis-respite services earlier than the date planned.

(9) If an individual moves out of the setting without providing notice or is absent without notice for more than seven consecutive days, the provider may terminate residency in the manner provided in ORS 105.105 to 105.168 after seven consecutive days of the individual's absence. The provider shall make an attempt to contact the individual or representative and others interested in the individual's circumstances to confirm the individual's intent to discontinue residency.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

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 4-2008, f. & cert. ef. 6-12-08; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17; MHS 5-2017, f. & cert. ef. 6-8-17

309-035-0175

Individual Rights

(1) Each individual shall be assured the same civil and human rights accorded to other citizens. These rights shall be assured unless expressly limited by a court in the case of an individual who has been adjudicated incompetent and not restored to legal capacity. The rights described in paragraphs (2) and (3) of this section are in addition to and do not limit all other statutory and constitutional rights that are afforded to all citizens including, but not limited to, the right to vote, marry, have or not have children, own and dispose property, enter into contracts and execute documents.

(2) A provider shall actively work to support and ensure each individual's rights described in this rule are not limited or infringed upon by the provider except where expressly allowed under these rules.

(3) The provider shall ensure that individuals receiving mental health services have the rights set forth in ORS 430.210:

(4) An individual also has a right to the following:

(a) Adequate food, shelter, and clothing;

(b) A reasonable accommodation if, due to their disability, the housing and services are not sufficiently accessible;

(c) Confidential communication including receiving and opening personal mail, private visits with family members and other guests, and access to a telephone with privacy for making and receiving telephone calls;

(d) Express sexuality in a socially appropriate and consensual manner;

(e) Access to community resources including recreation, religious services, agency services, employment, and day programs unless such access is legally restricted;

(f) Be free from seclusion and restraint except as outlined in OAR 309-035-0205.

(g) To review the program's policies and procedures; and

(h) Not participate in research without informed voluntary written consent.

(5) An individual also has the following HCBS rights:

(a) Live under a legally enforceable residency agreement in compliance with protections substantially equivalent to landlord-tenant laws as described in this rule;

(b) Have visitors of the individual's choosing at any time and the freedom to visit with guests within the common areas of the setting and the individual's unit;

(c) The freedom and support to control the individual's own schedule and activities including but not limited to accessing the community without restriction;

(d) Have a lockable door in the individual's unit that may be locked by the individual, and only appropriate program staff have a key to access the unit;

(e) A choice of roommates when sharing a unit;

(f) Furnish and decorate the individual's unit according to the Residency Agreement;

(g) The freedom and support to have access to food at any time;

(h) Privacy in the individual's unit; and

(i) Section (5) of this rule are effective July 1, 2016, and OAR 309-035-0115(17).

(6) An SRTF is not required to maintain the qualities or obligations identified in section (5) (b), (c), (d), (e) and (h). The provider is not required to seek an individually-based limitation to comply with these rules.

(7) A provider is not required to comply with section (5) (a) of this rule when providing an individual with crisis-respite services. The provider is not required to seek an individually-based limitation for such an individual to comply with these rules.

(8) For the purpose of this section, these terms have the following meanings:

(a) "Fresh air" means the inflow of air from outside the facility where the individual is receiving services. "Fresh air" may be accessed through an open window or similar method as well as through access to the outdoors;

(b) "Outdoors" means an area with fresh air that is not completely enclosed overhead. "Outdoors" may include a courtyard or similar area;

(c) If an individual requests access to fresh air and the outdoors or the individual's treating health care provider determines that fresh air or the outdoors would be beneficial to the individual, the program in which the individual is receiving services shall provide daily access to fresh air and the outdoors unless this access would create a significant risk of harm to the individual or others;

(d) The determination whether a significant risk of harm to the individual or others exists shall be made by the individual's treating health care provider. The treating health care provider may find that a significant risk of harm to the individual or others exists if:

(A) The individual's circumstances and condition indicate an unreasonable risk of harm to the individual or others that cannot be reasonably accommodated within existing programming should the individual be allowed access to fresh air and the outdoors; or

(B) The program's existing physical setting or existing staffing prevent the provision of access to fresh air and the outdoors in a manner that maintains the safety of the individual or others.

(e) If a provider determines that its existing physical setting prevents the provision of access to fresh air and the outdoors in a safe manner, the provider shall make a good faith effort at the time of any significant renovation to the physical setting that involves renovation of the unit or relocation of where individuals are treated to include changes to the physical setting or location that allows access to fresh air and the outdoors, so long as such changes do not add an unreasonable amount to the cost of the renovation.

(9) The program shall have and implement written policies and procedures that protect individuals' rights and encourage and assist individuals to understand and exercise their rights. The program shall post a listing of individual rights under these rules in a place readily accessible to all individuals and visitors.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

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 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17; MHS 5-2017, f. & cert. ef. 6-8-17

309-035-0183

Individual Grievances and Appeals

(1) The provider shall develop and implement written policies and procedures concerning the grievance and appeal process. A copy of the grievance and appeal process shall be posted in a place readily accessible to individuals. A copy of the grievance and appeal process shall be provided to each individual at the time of admission to the program.

(2) A provider's process for grievances shall, at a minimum, include the following:

(a) Individuals shall be encouraged to informally resolve complaints through discussion with program staff; and

(b) If the individual is not satisfied with the informal process or does not wish to use it, the individual may proceed as follows:

(A) The individual may submit a complaint in writing to the program administrator. The individual may receive assistance in submitting the com-

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plaint from any person whom the individual chooses. If requested by the individual, program staff shall be available to assist the individual;

(B) The written complaint shall go directly to the program administrator without being read by other program staff unless the individual requests or permits other program staff to read the complaint;

(C) The complaint shall include the reasons for the grievance and the proposed resolutions. No complaint shall be disregarded because it is incomplete;

(D) Within five days of receipt of the complaint, the program administrator shall meet with the individual to discuss the complaint. The individual may have an advocate or other person of their choosing present for this discussion;

(E) Within five days of meeting with the individual, the program administrator shall provide a written decision to the individual. As part of the written decision, the program administrator shall provide information about the appeal process; and

(F) In circumstances where the matter of the complaint is likely to cause irreparable harm to a substantial right of the individual before the grievance procedures outlined in OAR 309-035-0183 are completed, the individual may request an expedited review. The program administrator shall review and respond in writing to the grievance within 48 hours. The written decision shall include information about the appeal process.

(3) An individual, an individual's legal representative, the Division or other Division-approved party, and an applicant shall have the right to appeal admission, termination, and grievance decisions as follows:

(a) If the individual is not satisfied with the decision, the individual may file an appeal in writing within ten days of the date of the program administrator's decision to the complaint or notification of admission denial or termination; and

(b) If program services are delivered by a person or entity other than the Division, the appeal shall be submitted to the CMHP director or designee in the county where the program is located:

(A) The individual may receive assistance in submitting the appeal. If requested by the individual, program staff shall be available to assist the individual;

(B) The CMHP director or designee shall provide a written decision within ten days of receiving the appeal; and

(C) If the individual is not satisfied with the CMHP director's decision, the individual may file a second appeal in writing within ten days of the date of the CMHP director's written decision to the deputy director of the Division or designee. The decision of the deputy director of the Division shall be final.

(c) If program services are delivered by the Division, the appeal shall be submitted to the deputy assistant director or designee:

(A) The individual may receive assistance in submitting the appeal. If requested by the individual, program staff shall be available to assist the individual;

(B) The deputy director or designee shall review and approve or deny the appeal;

(C) The Division shall notify the individual of the decision in writing within ten days after receipt of the appeal; and

(D) If the individual is not satisfied with the deputy assistant director's or designee's decision, the individual may submit a second appeal in writing within ten days of the date of the written decision to the assistant director of the Division. The decision of the assistant director of the Division shall be final.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

Hist.: MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17; MHS 5-2017, f. & cert. ef. 6-8-17

309-035-0185

Individual Assessment and Residential Service Plan

(1) The program shall complete an assessment for each individual within 14 days after admission to the program unless admitted for crisis-respite services:

(a) The assessment shall be based upon an interview with the individual to identify strengths, preferences, and service needs; observation of the individual's capabilities within the residential setting; a review of information in the individual service record; and contact with representatives of other involved agencies, family members, and others, as appropriate. All contacts with others shall be made with proper authorization for the release of information;

(b) Assessment findings shall be summarized in writing and included in the individual service record. Assessment findings shall include, but not be limited to, diagnostic and demographic data; identification of the indi-

vidual's medical, physical, emotional, behavioral, and social strengths, preferences, and needs related to independent living and community functioning; and recommendations for residential service plan goals; and

(c) The provider shall provide assessment findings to the person-centered service plan coordinator to assist in the development of the person-centered service plan.

(2) Within 30 days of the date of admission, the person-centered service plan coordinator under contract with the Division and assigned to the individual or program site shall schedule and conduct an assessment of the individual for the purpose of developing a person-centered service plan. The provider shall support the person-centered service plan coordinator efforts to develop the plan and provide information as necessary.

(3) The provider shall develop and implement an individualized plan for the purpose of implementing and documenting the provision of services and supports as well as any individually-based limitations contained within the person-centered service plan. Identification of the goals to be accomplished through the services provided shall be prepared for each individual within 30 days after admission, unless admitted to the facility for crisis-respite services:

(a) If the person-centered service plan is unavailable for use in developing the residential service plan, providers shall still develop an initial residential service plan based on the information available within 30 days of admission. Upon the person-centered service plan becoming available, the providers shall amend the residential service plan as necessary to comply with this rule;

(b) The residential service plan shall be based upon the findings of the individual assessment, be developed with participation of the individual and representative, and be developed through collaboration with the individual's primary mental health treatment provider. With consent of the individual or representative, family members, representatives from involved agencies, and others with an interest in the individual's circumstances shall be invited to participate. All contacts with others shall be made with proper, prior authorization from the individual;

(c) The residential service plan shall include the following:

(A) The necessary steps and actions of the provider for the implementation and provision of services consistent and as required by the person-centered service plan;

(B) Identify the individual's service needs, desired outcomes, and service strategies to address the following: physical and medical needs, medication regimen, self-care, social-emotional adjustment, behavioral concerns, independent living capability, and community navigation, all areas identified in the person-centered service plan and any other areas.

(d) The residential service plan shall be signed by the individual, the individual's representative, the program administrator or other designated program staff person, and others, as appropriate, to indicate mutual agreement with the course of services outlined in the plan; and

(e) The provider shall attach the residential service plan to the person-centered service plan.

(4) For an individual admitted to a program for 30 days or less for the purpose of receiving crisis-respite services, an assessment and residential service plan shall be developed within 48 hours of admission that identifies service needs, desired outcomes, and the service strategies to be implemented to resolve the crisis or address other needs of the individual that resulted in the short-term service arrangement.

(5) The provider shall maintain progress notes within each individual's service record and document significant information relating to all aspects of the individual's functioning and progress toward desired outcomes identified in the residential service plan. The provider shall enter a progress note in the individual's record at least once each month.

(6) The provider shall review and update the assessment and residential service plan at least annually. On an ongoing basis, the provider shall update the residential service plan as necessary based upon changing circumstances or upon the individual's request for reconsideration.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

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 4-2008, f. & cert. ef. 6-12-08; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17; MHS 5-2017, f. & cert. ef. 6-8-17

309-035-0190

Person-Centered Service Plan

This rule becomes effective July 1, 2016, and enforceable as described in OAR 309-035-0115(17).

(1) When developed as described in sections (2) and (3), a person-centered service plan shall be developed through a person-centered service planning process. The person-centered service planning process:

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- (a) Is driven by the individual;
- (b) Includes people chosen by the individual;
- (c) Provides necessary information and supports to ensure the individual directs the process to the maximum extent possible and is enabled to make informed choices and decisions;
- (d) Is timely, responsive to changing needs, occurs at times and locations convenient to the individual, and is reviewed at least annually;
- (e) Reflects the cultural considerations of the individual;
- (f) Uses language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual and representative;
- (g) Includes strategies for resolving disagreement within the process including clear conflict of interest guidelines for all planning participants such as:
 - (A) Discussing the concerns of the individual and determining acceptable solutions;
 - (B) Supporting the individual in arranging and conducting a person-centered service planning meeting;
 - (C) Utilizing any available greater community conflict resolution resources;
 - (D) Referring concerns to the Office of the Long-Term Care Ombudsman; or
 - (E) For Medicaid recipients, following existing, program-specific grievance processes.
- (h) Offers choices to the individual regarding the services and supports the individual receives and from whom and records the alternative HCB settings considered by the individual;
- (i) Provides a method for the individual or representative to request updates to the person-centered service plan;
- (j) Is conducted to reflect what is important to the individual to ensure delivery of services in a manner reflecting personal preferences and ensuring health and welfare;
- (k) Identifies the strengths and preferences, service and support needs, goals, and desired outcomes of the individual;
- (L) Includes any services that are self-directed, if applicable;
- (m) Includes but is not limited to individually identified goals and preferences related to relationships, greater community participation, employment, income and savings, healthcare and wellness, and education;
- (n) Includes risk factors and plans to minimize any identified risk factors; and
- (o) Results in a person-centered service plan documented by the person-centered services plan coordinator, signed by the individual or the individual's representative, participants in the person-centered service planning process, and all persons responsible for the implementation of the person-centered service plan. The person-centered service plan is distributed to the individual and the individual's representative and other people involved in the person-centered service plan.

(2) Person-Centered Service Plans:

- (a) To avoid conflict of interest, the person-centered service plan may not be developed by the provider for individuals receiving Medicaid. The Division may grant an exception when it has determined that the provider is the only willing and qualified entity to provide case management and develop the person-centered service plan;
- (b) When the provider is responsible for developing the person-centered service plan, the provider shall ensure that the plan includes the following:
 - (A) HCBS and setting options based on the individual's needs and preferences, and for residential settings, the individual's available resources for room and board;
 - (B) The HCBS and settings are chosen by the individual and are integrated in and support full access to the greater community;
 - (C) Opportunities to seek employment and work in competitive integrated employment settings for those individuals who desire to work. If the individual wishes to pursue employment, a non-disability specific setting option shall be presented and documented in the person-centered service plan;
 - (D) Opportunities to engage in greater community life, control personal resources, and receive services in the greater community to the same degree of access as people not receiving HCBS;
 - (E) The strengths and preferences of the individual;
 - (F) The service and support needs of the individual;
 - (G) The goals and desired outcomes of the individual;
 - (H) The providers of services and supports including unpaid supports provided voluntarily;
 - (I) Risk factors and measures in place to minimize risk;

- (J) Individualized backup plans and strategies, when needed;
- (K) People who are important in supporting the individual;
- (L) The person responsible for monitoring the person-centered service plan;
- (M) Language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual receiving services and the individual's representative;
- (N) The written informed consent of the individual or the individual's representative;
- (O) Signatures of the individual or the individual's representative, participants in the person-centered service planning process, and all persons and entities responsible for the implementation of the person-centered service plan;
- (P) Self-directed supports; and
- (Q) Provisions to prevent unnecessary or inappropriate services and supports.
- (c) When the provider is not responsible for developing the person-centered service plan but provides or shall provide services to the individual, the provider shall provide relevant information and provide necessary support for the person-centered service plan coordinator or other individuals developing the plan to fulfill the characteristics described in subsection (b) of this section;
 - (d) The individual or representative decides on the level of information in the person-centered service plan that is shared with providers. To effectively provide services, providers shall have access to the portion of the person-centered service plan that the provider is responsible for implementing;
 - (e) The person-centered service plan shall be distributed to the individual, individual's representatives and others involved in the person-centered service plan;
 - (f) The person-centered service plan shall justify and document any individually-based limitation to be applied as outlined in OAR 309-035-0195 when the qualities under 309-035-0195(1) create a threat to the health and safety of the individual or others; and
 - (g) The person-centered service plan shall be reviewed and revised:
 - (A) At the request of the individual or representative;
 - (B) When the circumstances or needs of the individual change; or
 - (C) Upon reassessment of functional needs as required every 12 months.
 - (3) Because it may not be possible to assemble complete records and develop a person-centered service plan during the crisis-respite individual's short stay, the provider is not required to develop a person-centered service plan under these rules, but shall, at a minimum, develop an assessment and residential service plan as deemed appropriate to identify service needs, desired outcomes, and service strategies to resolve the crisis or address the individual's other needs that caused the need for crisis-respite services. In addition, the provider shall provide relevant information and provide necessary support for the person-centered service plan coordinator as described in this rule.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

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 4-2008, f. & cert. ef. 6-12-08; MHS 13-2016(Temp), f. 9-6-16, cert. ef. 9-7-16 thru 3-3-17; MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17; MHS 5-2017, f. & cert. ef. 6-8-17

309-035-0195

Individually-Based Limitations

This rule becomes effective on July 1, 2016, and enforceable as described in OAR 309-035-0115(17).

- (1) When the program qualities described below create a threat to the health and safety of an individual or others, a provider may seek to apply an individually-based limitation through the process described in this rule. The program qualities subject to a potential individually-based limitation include the individual's right to:
 - (a) The freedom and support to access food at any time;
 - (b) Have visitors of the individual's choosing at any time;
 - (c) Have a unit entrance door that is lockable by the individual with only appropriate staff having access;
 - (d) Choose a roommate when sharing a unit;
 - (e) Furnish and decorate the individual's unit as agreed to in the Residency Agreement;
 - (f) The freedom and support to control the individual's schedule and activities; and
 - (g) Privacy in the individual's unit.
- (2) A provider may apply an individually-based limitation only if:

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- (a) The program quality threatens the health or safety of the individual or others;
- (b) The individually-based limitation is supported by a specific assessed need;
- (c) The individual or representative consents;
- (d) The limitation is directly proportionate to the specific assessed need; and
- (e) The individually-based limitation will not cause harm to the individual.

(3) The provider shall demonstrate and document that the individually-based limitation meets the requirements of section (2) of this rule and the measures described below in the person-centered service plan. The provider shall submit and sign a program-created form that includes the following:

- (a) The specific and individualized assessed need justifying the individually-based limitation;
- (b) The positive interventions and supports used prior to consideration of any individually-based limitation;
- (c) Documentation that the provider or other entities have tried other less intrusive methods, but those methods did not work;
- (d) A clear description of the limitation that is directly proportionate to the specific assessed need;
- (e) Regular collection and review of data to measure the ongoing effectiveness of the individually-based limitation;
- (f) Established time limits for periodic reviews of the individually-based limitation to determine if the limitation should be terminated or remains necessary;
- (g) The informed consent of the individual or representative including any discrepancy between the wishes of the individual and the consent of the legal representative; and
- (h) An assurance that the interventions and support do not cause harm to the individual.

(4) The provider shall:

- (a) Maintain a copy of the completed and signed form documenting the consent to the individually-based limitation described in section (4) of this rule. The form shall be signed by the individual or representative;
 - (b) Regularly collect and review the ongoing effectiveness of and the continued need for the individually-based limitation; and
 - (c) Request review of the individually-based limitation by the person-centered service plan coordinator when a new individually-based limitation is indicated or change or removal of an individually-based limitation is needed but no less than annually.
- (5) The qualities described in section (2)(b)-(g) do not apply to an individual receiving services at a SRTF, including but not limited to, an individual receiving crisis-respite services in a secure residential setting. A provider does not need to seek an individually-based limitation to comply with these rules.

(6) The qualities described in sections (2)(d) and (g) do not apply to an individual receiving crisis-respite services, and a provider does not need to seek an individually-based limitation to comply with these rules.

Stat. Auth.: ORS 413.042, 443.450
Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991
Hist.: MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17; MHS 5-2017, f. & cert. ef. 6-8-17

309-035-0200

Individual Services and Activities

- (1) The provider shall make services and activities available at the program including care and treatment consistent with ORS 443.400 and those services individually specified for the individual in the residential service plan developed as outlined in OAR 309-035-0185. The provider shall encourage individuals to care for their own needs to the extent possible. The provider shall ensure all services and activities be provided in a manner that respects individuals' rights, promotes recovery, and protects personal dignity.
- (2) Services and activities to be available shall include but not limited to:
 - (a) Provision of adequate shelter;
 - (b) Provision of at least three meals per day, seven days per week, provided pursuant to OAR 309-035-0210;
 - (c) Assistance and support, as necessary, to enable individuals to meet personal hygiene and clothing needs;
 - (d) Laundry services that may include access to washers and dryers so individuals can do their own personal laundry;
 - (e) Housekeeping essential to the health and comfort of individuals;
 - (f) Activities and opportunities for socialization and recreation both within the setting and in the larger community;

- (g) Health-related services provided in accordance with OAR 309-035-0215;
- (h) Assistance with community navigation and transportation arrangements;
- (i) Assistance with money management when requested by an individual to include accurate documentation of all funds deposited and withdrawn when funds are held in trust for the individual;
- (j) Assistance with acquiring skills to live as independently as possible;
- (k) Assistance with accessing other additional services, as needed; and

(L) Any additional services required under contract to the Division.
Stat. Auth.: ORS 413.042, 443.450
Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991
Hist.: MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17; MHS 5-2017, f. & cert. ef. 6-8-17

309-035-0205

Use of Seclusion or Restraints

- (1) The use of seclusion or restraints is prohibited except in SRTFs with the Division's approval.
- (2) A SRTF provider or applicant may submit an application to the Division for approval to use seclusion or restraints pursuant to OAR 309-033-0700 through 309-033-0740. Approval by the Division shall be based upon the following:
 - (a) A determination that the individuals served or proposed to be served have a history of behavioral concerns involving threats to the safety and well-being of themselves or others;
 - (b) The applicant demonstrates that the availability of seclusion or restraints is necessary to safely accommodate individuals who would otherwise be unable to experience a community residential program; and
 - (c) The applicant demonstrates an ability to comply with OAR 309-033-0700 through 0740 and 309-033-0500 through 0560. These rules include special requirements for staffing, training, reporting, policies and procedures, and the setting's physical environment.
- (3) Seclusion or restraints may only be used in an approved SRTF when an emergency occurs in accordance with OAR 309-033-0700 through 0740 and 309-033-0500 through 0560. In such emergency situations, seclusion and restraint shall be used as a last resort behavior management option after less restrictive behavior management interventions have failed, or in the case of an unanticipated behavioral outburst, to ensure safety within the program. An approved SRTF shall implement policies and procedures approved by the Division outlining the circumstances under which seclusion or restraints may be used and the preventive measures to be taken before such use. All incidents involving the use of seclusion or restraints shall be reported to the Division. To use seclusion or restraints with an individual who is not in state custody under civil commitment proceedings, the individual shall be placed on a hold.

Stat. Auth.: ORS 413.042, 443.450
Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991
Hist.: MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17; MHS 5-2017, f. & cert. ef. 6-8-17

309-035-0210

Food Services

- (1) The provider shall plan and serve meals in accordance with the recommended dietary allowances found in the United States Department of Agriculture Food Guide Pyramid.
- (2) The provider shall obtain an order from an LMP for each individual who, for health reasons, is on a modified or special diet. The provider shall plan such diets in consultation with the individual.
- (3) The provider shall support the individual's right to access food at any time. The provider may only apply an individually-based limitation when the circumstances meet and the provider complies with the standards and requirements of OAR 309-035-0195. This section is effective July 1, 2016, and enforceable as described in OAR 309-035-0115(17).
- (4) If an individual misses a meal at a scheduled time, the provider shall make an alternative meal available.
- (5) The provider shall prepare menus at least one week in advance and shall provide a sufficient variety of foods served in adequate amounts for each individual at each meal and adjusted for seasonal changes. The provider shall file and maintain records of menus in the facility for at least 30 days. The provider shall consider individual preferences and requests in menu planning. The provider shall reasonably accommodate religious and vegetarian preferences.
- (6) The provider shall maintain adequate supplies of staple foods for a minimum of one week and perishable foods for a minimum of two days

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at the setting. An emergency supply of potable water shall be available such that the provider maintains seven gallons of water per individual.

(7) The provider shall store, prepare, and serve food in accordance with Health Services Food Sanitation Rules.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

Hist.: MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17; MHS 5-2017, f. & cert. ef. 6-8-17

309-035-0215

Health Services

(1) The program administrator shall ensure that all individuals are offered medical attention when needed. The provider shall arrange for health services with the informed consent of the individual or the individual's representative. The program shall arrange for physicians to be available in the event the individual's regular physician is unavailable. The provider shall identify a hospital emergency room that may be used in case of emergency.

(2) The provider shall ensure that each individual admitted to the program shall be screened by an LMP or other qualified health care professional to identify health problems and to screen for communicable disease. The provider shall maintain documentation of the initial health screening in the individual service record:

(a) The health screening shall include a brief history of health conditions, current physical condition, and a written record of current or recommended medications, treatments, dietary specifications, and aids to physical functioning;

(b) For regular admissions, the health screening shall be obtained prior to the individual's admission and include the results of testing for tuberculosis;

(c) For emergency admissions including crisis-respite admissions, the health screening shall be obtained as follows:

(A) For individuals experiencing psychiatric or medical distress, a health screening shall be completed by an LMP prior to the individual's admission or within 24 hours of the emergency placement. The health screening shall confirm that the individual does not have health conditions requiring continuous nursing care, a hospital level of care, or immediate medical assistance. For each crisis-respite individual who continues in the program for more than seven consecutive days, a complete health examination shall be arranged if any symptoms of a health concern exist;

(B) For other individuals who are admitted on an urgent basis due to a lack of alternative supportive housing, the health screening shall be obtained within 72 hours after the individual's admission;

(C) The health screening criteria may be waived for individuals admitted for crisis-respite services who are under the active care of an LMP if it is the opinion of the attending health care professional that the crisis-respite placement presents no health risk to the individual or other individuals in the program. Such a waiver shall be provided in writing and be signed and dated by the attending health care professional within 24 hours of the individual's admission.

(3) Except for crisis-respite individuals, the program shall ensure that each individual has a primary physician who is responsible for monitoring their health care. Regular health examinations shall be done in accordance with the recommendations of this primary health care professional but not less than once every three years. Newly admitted individuals shall have a health examination completed within one year prior to admission or within three months after admission. Documentation of findings from each examination shall be placed in the individual's service record.

(4) A written order signed by a physician is required for any medical treatment, special diet for health reasons, aid to physical functioning, or limitation of activity.

(5) A written order signed by a physician is required for all medications administered or supervised by program staff. This written order is required before any medication is provided to an individual. Medications may not be used for the convenience of staff or as a substitute for programming. Medications may not be withheld or used as reinforcement or punishment or in quantities that are excessive in relation to the amount needed to attain the client's best possible functioning:

(a) Medications shall be self-administered by the individual if the individual demonstrates the ability to self-administer medications in a safe and reliable manner. In the case of self-administration, both the written orders of the prescriber and the residential service plan shall document that medications shall be self-administered. The self-administration of medications may be supervised by program staff who may prompt the individual to administer the medication and observe the fact of administration and

dosage taken. When supervision occurs, program staff shall enter information in the individual's record consistent with section (5) (h) below;

(b) Program staff who assist with administration of medication shall be trained by a Licensed Medical Professional on the use and effects of commonly used medications;

(c) Medications prescribed for one individual may not be administered to or self-administered by another individual;

(d) The program may not maintain stock supplies of prescription medications. The facility may maintain a stock supply of non-prescription medications;

(e) The program shall develop and implement a policy and procedure that ensures all orders for prescription drugs are reviewed by an LMP, as specified by a physician, at least every six months. When this review identifies a contra-indication or other concern, the individual's primary physician or LMP shall be immediately notified. Each individual receiving psychotropic medications shall be evaluated at least every three months by the LMP prescribing the medication, who shall note for the individual's record the results of the evaluation and any changes in the type and dosage of medication, the condition for which it is prescribed, when and how the medication is to be administered, common side effects, including any signs of tardive dyskinesia, contraindications or possible allergic reactions, and what to do in case of a missed dose or other dosing error;

(f) The provider shall dispose of all unused, discontinued, outdated, or recalled medications and any medication containers with worn, illegible or missing labels. The provider shall dispose of medications in a safe method consistent with any applicable federal statutes and designed to prevent diversion of these substances to persons for whom they were not prescribed. The provider shall maintain a written record of all disposals specifying the date of disposal, a description of the medication, its dosage potency, amount disposed, the name of the individual for whom the medication was prescribed, the reason for disposal, the method of disposal, and the signature of the program staff disposing of the medication. For any medication classified as a controlled substance in schedules 1 through 5 of the Federal Controlled Substance Act, the disposal shall be witnessed by a second staff person who documents their observation by signing the disposal record;

(g) The provider shall properly and securely store all medications in a locked space for medications only in accordance with the instructions provided by the prescriber or pharmacy. Medications for all individuals shall be labeled. Medications requiring refrigeration shall be stored in an enclosed, locked container within the refrigerator. The provider shall ensure that individuals have access to a locked, secure storage space for their self-administered medications. The program shall note in its written policy and procedures which persons have access to this locked storage and under what conditions;

(h) For all individuals taking prescribed medication, the provider shall record in the medical record each type, date, time, and dose of medication provided. All effects, adverse reactions, and medication errors shall be documented in the individual's service record. All errors, adverse reactions, or refusals of medication shall be reported to the prescribing LMP within 48 hours;

(i) P.R.N. medications and treatments shall only be administered in accordance with administrative rules of the Board of Nursing, chapter 851, division 47.

(6) Nursing tasks may be delegated by a registered nurse to direct care staff within the limitations of their classification and only in accordance with administrative rules of the Board of Nursing, chapter 851, division 47.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

Hist.: MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17; MHS 5-2017, f. & cert. ef. 6-8-17

309-035-0220

Civil Penalties

(1) For purposes of imposing civil penalties, programs licensed under ORS 443.400 to 443.455 are considered to be long-term care facilities subject to ORS 441.705 to 441.745.

(2) Violations of any requirement within any part of the following sections of the rule may result in a civil penalty:

- (a) 309-035-0115;
- (b) 309-035-0120;
- (c) 309-035-0125;
- (d) 309-035-0130;
- (e) 309-035-0135;
- (f) 309-035-0140;
- (g) 309-035-0145;

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Hist.: MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17; MHS 5-2017, f. & cert. ef. 6-8-17

**Oregon Health Authority,
Public Employees' Benefit Board
Chapter 101**

- (h) 309-035-0150;
- (i) 309-035-0155;
- (j) 309-035-0163;
- (k) 309-035-0170;
- (l) 309-035-0175;
- (m) 309-035-0183;
- (n) 309-035-0185;
- (o) 309-035-0200;
- (p) 309-035-0205;
- (q) 309-035-0210; and
- (r) 309-035-0215.

(3) Civil penalties shall be assessed in accordance with the following guidelines:

(a) Civil penalties not to exceed \$250 per violation to a maximum of \$1,000 may be assessed for general violations of these rules. Such penalties shall be assessed after the procedures outlined in OAR 309-035-0110(8) have been implemented;

(b) A mandatory penalty up to \$500 shall be assessed for falsifying individual service records or program records or causing another to do so;

(c) A mandatory penalty of \$250 per occurrence shall be imposed for failure to have direct care staff on duty 24 hours per day;

(d) Civil penalties up to \$1,000 per occurrence may be assessed for substantiated abuse;

(e) In addition to any other liability or penalty provided by the law, the Division may impose a penalty for any of the following:

(A) Operating the program without a license;

(B) Operating with more individuals than the licensed capacity; and

(C) Retaliating or discriminating against an individual, family member, employee, or other person for making a complaint against the program.

(f) In imposing a civil penalty, the following factors shall be taken into consideration:

(A) The past history of the provider incurring the penalty in taking all feasible steps or procedures to correct the violation;

(B) Any prior violations of statutes, rules, or orders pertaining to the program;

(C) The economic and financial conditions of the provider incurring the penalty;

(D) The immediacy and extent to which the violation threatens or threatened the health, safety, or welfare of one or more residents; and

(E) The degree of harm caused to individuals.

(4) Any civil penalty imposed under this section shall become due and payable ten days after notice is received unless a request for a hearing is filed. The notice shall be delivered in person or sent by registered or certified mail and shall include a reference to the particular section of the statute or rule involved, a brief summary of the violation, the amount of the penalty or penalties imposed, and a statement of the right to request a hearing.

(5) The person to whom the notice is addressed shall have 20 days from the date of receipt of the notice to request a hearing. This request shall be in writing and submitted to the Division. If the written request for a hearing is not received, the Division shall issue a final order.

(6) All hearings shall be conducted pursuant to the applicable provisions of ORS Chapter 183.

(7) Unless the penalty is paid within ten days after the order becomes final, the order constitutes a judgment and may be recorded by the County Clerk that becomes a lien upon the title to any interest in real property owned by the person. The Division may also take action to revoke the license upon failure to comply with a final order.

(8) Civil penalties are subject to judicial review under ORS 183.480.

(9) All penalties recovered under ORS 443.790 to 443.815 shall be paid into the State Treasury and credited to the General Fund.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

Hist.: MHS 2-2017(Temp), f. 3-3-17, cert. ef. 3-4-17 thru 8-30-17; MHS 5-2017, f. & cert. ef. 6-8-17

309-035-0225

Criminal Penalties

(1) Violation of any provision of ORS 443.400 through 443.455 is a Class B misdemeanor.

(2) In addition, the Division may commence an action to enjoin operation of a program:

(a) When a program is operated without a valid license; or

(b) When a program continues to operate after notice of revocation has been received and a reasonable time has been allowed for placement of individuals in other programs.

Stat. Auth.: ORS 413.042, 443.450

Stats. Implemented: ORS 413.032, 443.400 - 443.465 & 443.991

Rule Caption: PEBB is amending its dependent child rule to clarify eligibility.

Adm. Order No.: PEBB 1-2017(Temp)

Filed with Sec. of State: 6-8-2017

Certified to be Effective: 6-8-17 thru 12-4-17

Notice Publication Date:

Rules Amended: 101-015-0011

Subject: PEBB is temporarily amending its dependent child rule to clarify eligibility.

Rules Coordinator: Cherie Taylor—(503) 378-6296

101-015-0011

Dependent Child

(1) A dependent child must meet the following eligibility conditions to receive PEBB health plan coverage:

(a) The child is:

(A) An eligible employee's, spouse's, or domestic partner's son, daughter, stepson, stepdaughter, adopted child or child placed for adoption, foster child or other legally placed child; or

(B) A Child by Affidavit lives with the eligible employee and is the eligible employee's IRS dependent. Coverage ends the last day of the month in which legal responsibility ends. An eligible employee may not add a child by affidavit age 19 or older to their PEBB coverage unless they can provide legal documentation for responsibility of the child beyond the age of 18; or

(C) The biological child of an eligible dependent child of an eligible employee, spouse, or domestic partner (a grandchild) and meets one of the following criteria:

(i) The child's parent will not be older than age 26 on the last day of the plan year, is unmarried and without a domestic partner, both the child's parent and the child live in the household of the eligible employee, and both receive over half of their financial support from the employee; or

(ii) The child lives with the eligible employee and the employee is legally responsible for the welfare of the grandchild. The employee must provide legal documentation of guardianship, conservatorship, or other custody documents upon enrollment. Coverage ends the last day of the month in which legal responsibility ends. An eligible employee may not add a grandchild age 19 or older to their PEBB coverage unless they can provide legal documentation for responsibility of the child beyond the age of 18.

(b) The child will not have attained age 27 as of December 31 of the plan year. The exception is a child who meets all the requirements of section (4) of this rule.

(2) During Open Enrollment, the employee may electronically enroll a foster child, child placed for adoption, a ward of the court, a child under legal guardianship or other court order, or grandchild if the appropriate notarized affidavit and required legal documentation are submitted within five business days following close date of the period. The exception is for an employee who is a newly eligible employee after the closure of the open enrollment period but before the start of the new plan year. The employee must complete paper open enrollment forms and submit the required legal documentation, as listed in (3) of this rule, to the agency before the start of the new plan year. If the employee does not submit the documentation as required, the child's enrollment will not activate. PEBB coverage for a child by affidavit will not extend beyond the last day of the month of the end date of responsibility stipulated in the legal document.

Example: Jack's foster child Joe is receiving PEBB coverage. Jack's legal documentation used at the time of Joe's enrollment stated that Jack will no longer be responsible for Joe when Joe turns 18. Joe's birth date is November 11, if there is no change to the legal responsibility or the documented responsibility end date, Joe's PEBB coverage will terminate November 30 the year he turns 18.

(3) Newly eligible employees or employees with a midyear change requesting to enroll a foster child, a child placed for adoption, a ward of the court, a child under legal guardianship or other court order, or an eligible grandchild must submit the appropriate forms and any legal documentation to the agency within the allowable enrollment time. The agency will not process the employee's enrollments until the employee submits all of the following:

(a) Completed and signed appropriate forms;

(b) Completed and notarized affidavit; and

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(c) Legal documentation as required.

(4) There is no age limit for a dependent child who is incapable of self-sustaining employment because of a developmental disability, mental illness, or physical disability, when all the criteria in this section are met.

(a) The employee must submit to PEBB any appeal and enrollment forms to enroll a disabled child age 26 or older, or to indicate the child disabled in the PEBB benefit record when the child is already receiving coverage.

(b) The child's attending physician must submit documentation of the child's disability to the employee's health plan. The health plan provides a medical review of the physician's medical documentation and provides PEBB a disability determination based on the review.

(c) When the employee requests to enroll a disabled child over the age of 26:

(A) The child must be the employee's qualifying tax dependent.

(B) The physician must verify to the health plan that the disability existed before the child attained age 26.

(C) The child must be unable to engage in substantial gainful activity because of a medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

(D) The employee must provide evidence to PEBB that the child has had continuous health plan coverage, group or individual, prior to attaining age 26 and the coverage remains in effect. The other coverage must continue until the employee's medical plan approves the child's health status as disabled and the PEBB plan is effective. If the child has not had continuous coverage, the child is not eligible for PEBB coverage.

(d) When a disabled child is receiving coverage beyond the age of 26, the employee's health plan can review the child's health status at any time and determine if the child continues to meet the criteria for a disabled child.

(e) If a disabled dependent child's PEBB coverage terminates for any reason after the age of 26, the child is ineligible for future enrollment as a dependent child under PEBB coverage. The exception is termination of the child's coverage due to the employee's termination of employment when the employee is rehired later into a PEBB benefit eligible position. In this situation, to enroll the child again as disabled all PEBB criteria for disabled child within (4) of this rule must be met.

(5) PEBB terminates all plan coverage for dependent children who reach age 26 during a calendar year at midnight December 31. PEBB will not terminate coverage for children age 26 or older when approved by the health plan as incapable of self-sustaining employment because of a developmental disability, mental illness, or physical disability pursuant to section (4) of this rule.

Stat. Auth.: ORS 243.125

Stats. Implemented: ORS 183, 192 & 243

Hist.: PEBB 3-2009, f. 9-29-09 cert. ef. 10-1-09; PEBB 1-2010(Temp), f. & cert. ef. 6-1-10 thru 11-28-10; PEBB 7-2010, f. 12-10-10, cert. ef. 1-1-11; PEBB 1-2017(Temp), f. & cert. ef. 6-8-17 thru 12-4-17

Oregon Health Authority, Public Health Division Chapter 333

Rule Caption: Marijuana Labeling and Testing; Medical Marijuana Growers, Processors, Dispensaries and Cards

Adm. Order No.: PH 9-2017

Filed with Sec. of State: 5-26-2017

Certified to be Effective: 5-31-17

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Rules Adopted: 333-007-0500, 333-007-2000, 333-008-2210

Rules Amended: 333-007-0090, 333-007-0200, 333-007-0210, 333-007-0220, 333-007-0300, 333-007-0310, 333-007-0315, 333-007-0320, 333-007-0330, 333-007-0340, 333-007-0345, 333-007-0350, 333-007-0360, 333-007-0370, 333-007-0390, 333-007-0400, 333-007-0410, 333-007-0420, 333-007-0430, 333-007-0440, 333-007-0450, 333-007-0480, 333-008-0033, 333-008-0550, 333-008-0570, 333-008-0600, 333-008-1020, 333-008-1030, 333-008-1070, 333-008-1200, 333-008-1205, 333-008-1230, 333-008-1245, 333-008-1248, 333-008-1620, 333-008-1630, 333-008-1690, 333-008-1760, 333-008-1810, 333-008-1830, 333-008-2180, 333-064-0100, 333-064-0110

Rules Repealed: 333-007-0490, 333-008-1220, 333-008-1500, 333-008-1501, 333-008-1505, 333-008-9900, 333-008-9910(T), 333-007-0090(T), 333-007-0310(T), 333-007-0315(T), 333-007-0320(T),

333-007-0350(T), 333-007-0360(T), 333-007-0410(T), 333-007-0430(T), 333-007-0440(T), 333-007-0450(T), 333-007-0480(T), 333-007-2000(T), 333-008-1200(T), 333-008-1230(T), 333-064-0100(T), 333-064-0110(T)

Subject: The Oregon Health Authority (OHA), Public Health Division is permanently adopting and amending rules in chapter 333, divisions 7 and 64 related to marijuana labeling, and marijuana laboratory sampling and testing; and permanently adopting, amending and repealing rules in chapter 333, division 8 pertaining to medical marijuana growers, processors, dispensaries and patient cards.

ORS 475B.555 directs the Oregon Health Authority (OHA), in consultation with the Oregon Liquor Control Commission (OLCC) and the Oregon Department of Agriculture (ODA), to protect public safety by establishing rules on marijuana laboratory sampling and testing, and marijuana labeling. In order to protect public health and safety, these rules adopt additional requirements for ordered tests, amend certain standards for the sampling and testing of marijuana items, including testing for pesticides, make changes to how control studies are conducted, allow for remediation of marijuana items under certain circumstances, permit OHA or OLCC to request that marijuana items be tested for heavy metals, and specifically allow for quality control or research and development testing. In addition, the rules amend the sampling procedures for testing marijuana items and the reporting of test results. These rules also allow for THC and CBD labeling to be expressed as a range or as an average of the values calculated. Other changes to chapter 333, division 7 and 64 include, but are not limited to:

- Clarify that a cannabinoid product intended for human consumption, which is not specifically categorized in the concentration and serving size limits found in Table 1 and 2, must meet the concentration and serving size limits for a cannabinoid edible.

- Clarify language and add requirements for registrants and licensees regarding ordering laboratory tests.

- Include requirements for testing usable marijuana intended for processing into a cannabinoid product.

- Increases period of time for the quantity of marijuana harvested to be included in a harvest lot from 48 hours to 72 hours.

- Increases the maximum quantity of usable marijuana in a batch from 10 lbs to 15 lbs.

- Changes to the control study rule, in particular what happens when a sample from a control study fails.

- Decreases the minimum number of samples needed for future testing for potency for cannabinoid products once it has passed a control study.

- Clarify language related to requirements for batches failing control studies.

- Amend certain sampling requirements for batches passing control studies.

- Allow for remediation of cannabinoid concentrates and extracts that fail for pesticides under certain circumstances.

- Allow for remediation of usable marijuana that failed for pyrethrin and piperonyl butoxide pesticide analytes under certain circumstances.

- Removes ethanol from the list of solvents to be tested.

- Clarify requirements and options for batches of marijuana items that fail testing.

- Include the testing of heavy metals as a part of registrant and licensee audit and random testing.

- Adopt rules for quality control and research and development testing.

- Adopt a rule that allows at a minimum 1/3 of batches from OLCC licensees to be tested for pesticides.

- Amend rules adding requirements for laboratories related to sampling, setting limits of quantification and non-compliance testing.

- Adopting a rule pertaining to marijuana test result reporting requirements for laboratories

Changes to chapter 333, division 8 of the Oregon Administrative Rules are necessary to implement SB 1511 (Oregon Laws 2016,

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chapter 83); and certain housekeeping measures are necessary for rules governing growers, dispensaries and processors. Revisions to these rules include, but are not limited to:

- Amends labeling of marijuana items THC concentration levels to be indicated as a range or average +/- 10 percent.
- Adopt language that states scales used by a person responsible for a grow site must be licensed by the Oregon Dept. of Agriculture (ODA).
- Adopt requirements for designation of plants at medical marijuana grow sites.
- Adopt language that allows OHA to share information with ODA when a violation of Oregon's pesticide law has occurred.
- Include rule references and clarify language regarding labeling, packaging, and testing for a person responsible for a grow site.
- Adopt language that indicates a dispensary or processor may not request a refund of the registration fee if a 60-day letter has been issued.
- Adopt and clarify requirements regarding new and renewal applications for dispensaries and processors.
- Adopt changes to circumstances when the Authority may refund dispensary and processor application fees.
- Clarify language around products intended for human consumption must be made and handled in a manner consistent with ODA statutes.
- Include language that states nicotine product may not be sold in a dispensary.
- Remove previous and nonapplicable rules regarding labeling, signage, and limited marijuana retail sales from registered dispensaries.
- Allow for the transfer of marijuana from a licensed producer to a medical marijuana dispensary or registered processor.
- Adopt rules for a penalty matrix for levels of rule violations by registrants.

In developing the rule changes, the OHA considered the cost of a potential testing procedure and how that cost will affect the cost to the ultimate consumer of the marijuana item as required under ORS 475B.555(8).

Rules Coordinator: Brittany Hall—(503) 449-9808

333-007-0090

General Label Requirements; Prohibitions; Exceptions

- (1) Principal Display Panel.
 - (a) Every container that contains a marijuana item for sale or transfer to a consumer, patient or designated primary caregiver must have a principal display panel, as that term is defined in OAR 333-007-0020.
 - (b) If a container is placed within packaging for purposes of displaying the marijuana item for sale or transfer to a consumer, patient or designated primary caregiver, the packaging must have a principal display panel as that term is defined in OAR 333-007-0020.
 - (c) The principal display panel must contain the product identity, net weight, and universal symbol, if applicable.
 - (d) If the product is a medical grade cannabinoid product, concentrate or extract processed by a licensee the principal display panel must include the medical grade symbol.
 - (2) A label required by these rules must:
 - (a) Be placed on the container and on any packaging that is used to display the marijuana item for sale or transfer to a consumer, patient or designated primary caregiver.
 - (b) Comply with the National Institute of Standards and Technology (NIST) Handbook 130 (2016), Uniform Packaging and Labeling Regulation, incorporated by reference.
 - (c) Be in no smaller than 8 point Times New Roman, Helvetica or Arial font;
 - (d) Be in English, though it can be in other languages; and
 - (e) Be unobstructed and conspicuous.
 - (3) A marijuana item may have one or more labels affixed to the container or packaging.
 - (4) A marijuana item that is in a container that because of its size does not have sufficient space for a label that contains all the information required for compliance with these rules:

(a) May have a label on the container that contains a marijuana item and on any packaging that is used to display the marijuana item for sale or transfer to a consumer, patient or designated primary caregiver that includes at least the following:

- (A) Information required on a principal display panel, if applicable for the type of marijuana item;
- (B) Licensee or registrant business or trade name and licensee or registrant number;
- (C) For licensees, package unique identification number and for registrants, batch or process lot number;
- (D) Concentration of THC and CBD; and
- (E) Required warnings; and
- (b) Must include all other required label information not listed in subsection (4)(a) of this rule on an outer container or package, or on a leaflet that accompanies the marijuana item.

(c) May:

- (A) Use a peel-back or accordion label with the information required in subsection (4)(b) of this rule, if the peel-back or accordion label can be easily identified by a patient or consumer as containing important information.
- (B) Use 6 point font for the information listed in paragraph (4)(a)(A) to (D) of this rule.

(5) A marijuana item in a container that is placed in packaging that is used to display the marijuana item for sale or transfer to a consumer, patient, or designated primary caregiver must comply with the labeling requirements in these rules, even if the container qualifies for the exception under section (4) of this rule.

(6) The universal symbol:

(a) Must be at least 0.48 inches wide by 0.35 inches high.

(b) May only be used by licensees or registrants.

(c) May be downloaded at www.healthoregon.org/marijuana.

(7) Medical grade symbol. The medical grade symbol must be at least 0.35 inches in diameter.

(8) A label may not:

(a) Contain any untruthful or misleading statements including, but not limited to, a health claim that is not supported by the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), and for which there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims; or

(b) Be attractive to minors, as that is defined in OAR 845-025-7000.

(9) A marijuana item that falls within more than one category, for example a product that is both a cannabinoid concentrate and cannabinoid edible, must comply with the labeling requirements that apply to both categories, with the exception of the "DO NOT EAT" warning if the product is intended for human consumption or the "BE CAUTIOUS" warning if the effects of the product are customarily felt immediately.

(10) The THC and CBD amount required to be on a label must be based on the value calculated by the laboratory that did the testing in accordance with OAR 333-064-0100, plus or minus ten percent, except that a label may not have a THC value that exceeds the applicable maximum concentration limit. A registrant or licensee that has more than one laboratory test result for THC or CBD from the same batch may either express the THC or CBD amounts on the label:

(a) As a range, based on the high and low THC and CBD values for each sample that was tested; or

(b) As an average of all the THC values for each sample or an average of all the CBD values for each sample.

(11) If a marijuana item has more than one test batch number, laboratory, or test analysis date associated with the marijuana item that is being sold or transferred, each test batch number, laboratory and test analysis date must be included on a label.

(12) If a marijuana item is placed in a package that is being re-used, the old label or labels must be removed and it must have a new label or labels.

(13) A licensee or registrant must have documentation that demonstrates the validity of the calculation of the amount of sodium, sugar, carbohydrates and total fat in a cannabinoid edible and must make that documentation available to the Commission or the Authority upon request.

(14) Exit packaging must contain a label that reads: "Keep out of the reach of children."

(15) A cartridge containing a cannabinoid concentrate, extract or product intended for use with an inhalant delivery system as that is defined in ORS 431.840 is not required to be labeled in accordance with these rules

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except that the cartridge must have a label with the universal symbol. All the remaining label requirements must be included on the packaging that is used to display the cartridge for sale or transfer.

Stat. Auth.: ORS 475B.605
Stats. Implemented: ORS 475B.605
Hist.: PH 22-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 33-2016, f. & cert. ef. 11-28-16; PH 35-2016(Temp), f. & cert. ef. 12-2-16 thru 5-30-17; PH 38-2016(Temp), f. 12-13-16, cert. ef. 12-15-16 thru 5-30-17; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-007-0200

Concentration and Serving Size Limits: Definitions, Purpose, Scope and Effective Date

(1) In accordance with ORS 475B.625, the Authority must establish, for marijuana items sold or transferred to a consumer, patient or designated primary caregiver through a Commission licensed marijuana retailer or medical marijuana dispensary:

(a) The maximum concentration of THC permitted in a single serving of a cannabinoid product or cannabinoid concentrate or extract; and

(b) The number of servings permitted in a cannabinoid product container or cannabinoid concentrate or extract container.

(2) OAR 333-007-0200 through 333-007-0220 apply to:

(a) A Commission licensee as that is defined in OAR 845-025-1015; and

(b) A person registered with the Authority under ORS 475B.400 to 475B.525 who is not exempt under ORS 475B.630.

(3) The concentration of THC permitted under OAR 333-007-0210 through 333-007-0220 must take into account both the amount of Delta-9 THC in the cannabinoid product or cannabinoid concentrate or extract and the amount of tetrahydrocannabinolic acid (THCA) in the cannabinoid product or cannabinoid concentrate or extract that if heated would convert THCA to THC. A cannabinoid product or cannabinoid concentrate or extract that contains a high amount of THCA must meet the concentration limits established in OAR 333-007-0200 through 333-007-0220 even if heated.

(4) The amounts of THC listed on a label are based on an average from samples taken from a harvest or process lot and may not represent the exact amount of THC in a marijuana item purchased by a consumer, patient or designated primary caregiver.

(5) A marijuana item received or transferred by a dispensary must meet the concentration and serving size limits in OAR 333-007-0220.

(6) For purposes of OAR 333-007-0200 through 333-007-0220:

(a) The definitions in OAR 333-007-0020 apply unless otherwise specified.

(b) "Cannabinoid capsule" means a small soluble container, usually made of gelatin, that encloses a dose of a cannabinoid product, concentrate or extract intended for human ingestion.

(c) "Cannabinoid edible" means a food or potable liquid into which a cannabinoid concentrate or extract or the dried leaves or flowers of marijuana have been incorporated.

(d) "Cannabinoid suppository" means a small soluble container designed to melt at body temperature within a body cavity other than the mouth, especially the rectum or vagina containing a cannabinoid product, concentrate or extract.

(e) "Cannabinoid transdermal patch" means an adhesive substance applied to human skin that contains a cannabinoid product, concentrate or extract for absorption into the bloodstream.

(f) "Medical marijuana item" is a marijuana item for sale or transfer to a patient or designated primary caregiver and includes medical grade cannabinoid products, cannabinoid concentrates and cannabinoid extracts.

(g) "Retail adult use marijuana item" is a marijuana item for sale to a consumer.

(h) "Scored" means to physically demarcate a cannabinoid edible in a way that enables a reasonable person to:

(A) Intuitively determine how much of the product constitutes a single serving; and

(B) Easily physically separate the edible into single servings either by hand or with a common utensil, such as a knife.

Stat. Auth.: ORS 475B.625
Stats. Implemented: ORS 475B.625
Hist.: PH 22-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 33-2016, f. & cert. ef. 11-28-16; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-007-0210

Retail Marijuana Item Concentration and Serving Size Limits

(1) The maximum concentration or amount of THC permitted in a container and the maximum concentration or amount of THC permitted in

a serving of a retail adult use marijuana item is listed in Table 1. [Table not included. See ED. NOTE.]

(2) A cannabinoid edible must be scored unless it is not capable of being scored in which case the cannabinoid edible must be:

(a) Sold and packaged with a measuring device that measures single servings; or

(b) Placed in packaging that clearly enables a consumer to determine when a single serving has been consumed.

(3) Serving size is as determined by the processor.

(4) A retail adult use marijuana item that does not fall within a category in Table 1 such as cannabinoid suppositories and transdermal patches or is a cannabinoid product intended for human consumption that is not specifically categorized must meet the concentration and serving size limits applicable to a cannabinoid edible in Table 1.

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

Stat. Auth.: ORS 475B.625
Stats. Implemented: ORS 475B.625
Hist.: PH 22-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 33-2016, f. & cert. ef. 11-28-16; PH 33-2016, f. & cert. ef. 11-28-16; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-007-0220

Medical Marijuana Item Concentration Limits

(1) The maximum concentration or amount of THC permitted in a container and the maximum concentration or amount of THC permitted in a serving of a medical marijuana item is listed in Table 2.

(2) A cannabinoid edible must be scored unless it is not capable of being scored in which case the cannabinoid edible must be:

(a) Sold and packaged with a measuring device that measures single servings; or

(b) Placed in packaging that clearly enables a patient to determine when a single serving has been consumed, as that serving size is determined by the processor.

(3) Serving size is as determined by the processor.

(4) A medical marijuana item that does not fall within a category in Table 2 or is a cannabinoid product intended for human consumption that is not specifically categorized must meet the concentration and serving size limits applicable to a cannabinoid edible in Table 2.

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

Stat. Auth.: ORS 475B.625
Stats. Implemented: ORS 475B.625
Hist.: PH 22-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 33-2016, f. & cert. ef. 11-28-16; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-007-0300

Marijuana Testing: Purpose and Effective Date

(1) The purpose of these rules is to establish the minimum compliance testing standards for marijuana items. These rules are applicable to:

(a) A licensee; and

(b) A registrant who is not exempt from the testing requirements.

(2) The testing requirements do not apply to:

(a) A grower if the person is transferring usable marijuana or an immature marijuana plant to:

(A) A patient who designated the grower to grow marijuana for the patient; or

(B) A designated primary caregiver of the patient who designated the grower to grow marijuana for the patient; or

(b) A designated primary caregiver of a patient if the caregiver is transferring a marijuana item to a patient of the designated primary caregiver.

(c) Immature plants or seeds.

(3) A person registered with the Authority under ORS 475B.400 to 475B.525 who is subject to these rules may not:

(a) Transfer a marijuana item that is not sampled and tested in accordance with these rules; or

(b) Accept the transfer of a marijuana item that is not sampled and tested in accordance with these rules.

(4) A person licensed by the Commission must comply with these rules at all times.

Stat. Auth.: ORS 475B.555

Stats. Implemented: ORS 475B.555

Hist.: PH 22-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 33-2016, f. & cert. ef. 11-28-16; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-007-0310

Definitions

For purposes of OAR 333-007-0300 through 333-007-0500:

(1) "Authority" means the Oregon Health Authority.

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- (2) "Batch" means:
- (a) A quantity of usable marijuana from a harvest lot; or
 - (b) A quantity of cannabinoid concentrate or extract or cannabinoid product from a process lot.
- (3) "Cannabinoid" means any of the chemical compounds that are the active constituents of marijuana.
- (4) "Cannabinoid concentrate or extract" means a substance obtained by separating cannabinoids from marijuana by a mechanical, chemical or other process.
- (5) "Cannabinoid edible" means food or potable liquid into which a cannabinoid concentrate or extract or the dried leaves or flowers of marijuana have been incorporated.
- (6)(a) "Cannabinoid product" means a cannabinoid edible or any other product intended for human consumption or use, including a product intended to be applied to a person's skin or hair, that contains cannabinoids or the dried leaves or flowers of marijuana.
- (b) "Cannabinoid product" does not include:
 - (A) Usable marijuana by itself;
 - (B) A cannabinoid concentrate or extract by itself; or
 - (C) Industrial hemp, as defined in ORS 571.300.
 - (7) "Cannabinoid capsule":
 - (a) Means a small soluble container, usually made of gelatin that encloses a dose of a cannabinoid product, concentrate or extract intended for human ingestion.
 - (b) Does not mean a cannabinoid suppository.
 - (8) "Cannabinoid suppository" means a small soluble container designed to melt at body temperature within a body cavity other than the mouth, especially the rectum or vagina containing a cannabinoid product, concentrate or extract.
 - (9) "Cannabinoid tincture" means a solution of alcohol, cannabinoid concentrate or extract, and perhaps other ingredients intended for human consumption or ingestion, and that is exempt from the Liquor Control Act under ORS 471.035.
 - (10) "Cannabinoid topical" means a cannabinoid product intended to be applied to skin or hair and for purposes of testing includes transdermal patches.
 - (11) "Cannabinoid Transdermal patch" means an adhesive substance applied to human skin that contains a cannabinoid product, concentrate or extract for absorption into the bloodstream.
 - (12) "CBD" means cannabidiol, Chemical Abstracts Service Number 13956-29-1.
 - (13) "CBDA" means cannabidiolic acid, Chemical Abstracts Service Number 1244-58-2.
 - (14) "Chain of custody procedures" means procedures employed by laboratory personnel using a chain of custody form to record the possession of samples from the time of sampling through the retention time specified by the Authority or Commission.
 - (15) "Chain of custody form" means a form completed by laboratory personnel that documents the collection, transport, and receipt of samples by the laboratory.
 - (16) "Commission" means the Oregon Liquor Control Commission.
 - (17) "Compliance test" means a laboratory test required by these rules in order to allow the transfer or sale of a marijuana item.
 - (18) "Consumer" has the meaning given that term in ORS 475B.015 and does not include a patient or designated primary caregiver.
 - (19) "Control study" means a study performed on products or matrices of unknown homogeneity to assure required uniformity of product accomplished through sampling and testing as described in OAR 333-007-0440.
 - (20) "Delta-9 THC" is the principal psychoactive constituent (the principal cannabinoid) of cannabis, Chemical Abstracts Service Number 1972-08-3.
 - (21)(a) "Designated primary caregiver" means an individual 18 years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition, who is designated as such on that person's application for a registry identification card or in other written notification to the Authority, and who has been issued an identification card by the Authority under ORS 475B.415(5)(b).
 - (b) "Designated primary caregiver" does not include the person's attending physician. - (22) "Field duplicate sample" means sample increments taken in an identical manner to sample increments taken for the primary sample and representative of the same marijuana item being sampled that is prepared and analyzed separately from the primary sample.
 - (23) "Food" means a raw, cooked, or processed edible substance, or ingredient used or intended for use or for sale in whole or in part for human consumption, or chewing gum.
 - (24) "Grower" has the same meaning as "person responsible for a marijuana grow site."
 - (25) "Grow site" means a specific location registered by the Authority and used by the grower to produce marijuana for medical use by a specific patient under ORS 475B.420.
 - (26) "Harvest lot" means a specifically identified quantity of marijuana that is cultivated utilizing the same growing practices, harvested within a 72-hour period at the same location and cured under uniform conditions.
 - (27) "Homogeneous" means a cannabinoid product, concentrate or extract has uniform composition and properties throughout each process lot.
 - (28) "Human consumption or human ingestion" means to ingest, generally through the mouth, food, drink or other substances such that the substance enters the human body but does not include inhalation.
 - (29) "Laboratory" means a laboratory that is accredited under ORS 438.605 to 438.620 to sample or conduct tests on marijuana items and licensed by the Oregon Liquor Control Commission under ORS 475B.560.
 - (30) "Level of quantification" means the minimum levels, concentrations, or quantities of a target variable, for example an analyte, that can be reported by a laboratory with a specified degree of confidence.
 - (31) "Licensee" has the meaning given that term in ORS 475B.015.
 - (32)(a) "Marijuana" means the plant Cannabis family Cannabaceae, any part of the plant Cannabis family Cannabaceae and the seeds of the plant Cannabis family Cannabaceae.
 - (b) "Marijuana" does not include industrial hemp, as defined in ORS 571.300. - (33) "Marijuana item" means marijuana, usable marijuana, a cannabinoid product or a cannabinoid concentrate or extract.
 - (34) "Marijuana processing site" means a marijuana processing site registered under ORS 475B.435.
 - (35) "Medical marijuana dispensary" or "dispensary" means a medical marijuana dispensary registered under ORS 475B.450.
 - (36) "ORELAP" means the Oregon Environmental Laboratory Accreditation Program administered by the Authority pursuant to ORS 438.605 to 438.620.
 - (37) "Patient" has the same meaning as "registry identification cardholder."
 - (38) "Person responsible for a marijuana grow site" has the same meaning as "grower" and means a person who has been selected by a patient to produce medical marijuana for the patient and who has been registered by the Authority for this purpose under ORS 475B.420.
 - (39) "Process lot" means:
 - (a) Any amount of cannabinoid concentrate or extract of the same type and processed using the same extraction methods, standard operating procedures and batches from the same or a different harvest lot; or
 - (b) Any amount of a cannabinoid product of the same type and processed using the same ingredients, standard operating procedures and batches from the same or a different harvest lot or process lot of cannabinoid concentrate or extract as defined in subsection (a) of this section.
 - (40) "Processing" means the compounding or conversion of marijuana into cannabinoid products or cannabinoid concentrates or extracts.
 - (41) "Processing site" means a processor registered with Authority under ORS 475B.435.
 - (42) "Processor" has the meaning given that term in OAR 845-025-1015.
 - (43) "Producer" has the meaning given that term in OAR 845-025-1015.
 - (44) "Producing" means:
 - (a) Planting, cultivating, growing, trimming or harvesting marijuana; or
 - (b) Drying marijuana leaves and flowers.
 - (45) "Registrant" means a grower, marijuana processing site, or a medical marijuana dispensary registered with the Authority under ORS 475B.420, 475B.435 or 475B.450.
 - (46) "Registry identification cardholder" means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Authority under ORS 475B.415(5)(a).

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(47) “Relative percentage difference” or “RPD” means the comparison of two quantities while taking into account the size of what is being compared as calculated under OAR 333-064-0100.

(48) “Relative standard deviation” or “RSD” means the standard deviation expressed as a percentage of the mean recovery as calculated under OAR 333-064-0100.

(49) “Sample” means an amount of a marijuana item collected by laboratory personnel from a registrant or licensee and provided to a laboratory for testing.

(50) “Sample increment” means an amount of a marijuana item collected by laboratory personnel from a registrant or licensee that may be combined into a sample for purposes of testing or, in the case of a control study, is tested individually.

(51) “Sterilization” means the removal of all microorganisms and other pathogens from a marijuana item by treating it with approved chemicals or subjecting it to high heat.

(52) “Test batch” means a group of samples from a batch submitted collectively to a laboratory for testing purposes.

(53) “THC” means tetrahydrocannabinol and has the same Chemical Abstracts Service Number as delta-9 THC.

(54) “THCA” means tetrahydrocannabinolic acid, Chemical Abstracts Service Number 23978-85-0.

(55) “These rules” means OAR 333-007-0300 through 333-007-0500.

(56) “TNI” means The NELAC (National Environmental Laboratory Accreditation Conference) Institute, a voluntary organization of state and federal environmental officials and interest groups purposed primarily to establish consensus standards for accrediting environmental laboratories.

(57) “TNI EL Standards” means the adopted 2009 TNI Environmental Lab Standards (© 2009 The NELAC Institute), which describe the elements of laboratory accreditation developed and established by the consensus principles of TNI and that meet the approval requirements of TNI procedures and policies.

(58) “Total THC” means the molar sum of THC and THCA.

(59) “Unit of sale” means an amount of a marijuana item commonly packaged for transfer or sale to a consumer, patient or designated primary caregiver, or capable of being packaged for transfer or sale to a consumer, patient or designated primary caregiver.

(60)(a) “Usable marijuana” means the dried leaves and flowers of marijuana.

(b) “Usable marijuana” does not include:

(A) The seeds, stalks and roots of marijuana; or

(B) Waste material that is a by-product of producing or processing marijuana.

Stat. Auth.: ORS 475B.555

Stats. Implemented: ORS 475B.555

Hist.: PH 22-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 35-2016(Temp), f. & cert. ef. 12-2-16 thru 5-30-17; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-007-0315

Ordering Tests

(1) A registrant or licensee must provide a laboratory, prior to laboratory taking samples, with at a minimum, the following information:

(a) The registrant or licensee’s registrant or license number.

(b) The name, address and contact information of the registrant or licensee.

(c) Type of marijuana item.

(d) Harvest lot number that is associated with the batch numbers, if applicable.

(e) Process lot number that is associated with the batch numbers, if applicable.

(f) Batch numbers to be sampled.

(g) Total mass or volume of each batch to be sampled.

(h) For cannabinoid products, the unit of sale.

(i) Identification of the test or tests the laboratory is being requested to conduct.

(j) Whether the test or tests being requested are compliance tests.

(k) Whether the test or tests being requested are quality control or research and development tests.

(l) Whether a batch is being re-sampled because of a failed test, the date the failed test result was received by the registrant or licensee and laboratory identification number of the laboratory that conducted the initial test.

(m) Whether the marijuana item has a certified control study.

(2) If the registrant or licensee informs a laboratory that a marijuana item is being re-sampled after a failed test or has a certified control study,

the registrant or licensee must provide the laboratory with documentation of the failed test or certified control study as applicable.

(3) It is the responsibility of the registrant or the licensee to order the tests necessary to comply with these rules.

(4) A registrant or licensee may only order a compliance test for a marijuana item that the registrant or licensee has produced or processed, as applicable, except a wholesaler who may order a compliance test.

(5) A registrant or licensee may not order more than one compliance test for the same marijuana item.

Stat. Auth.: ORS 475B.555

Stats. Implemented: ORS 475B.555

Hist.: PH 22-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 35-2016(Temp), f. & cert. ef. 12-2-16 thru 5-30-17; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-007-0320

Compliance Testing Requirements for Marijuana or Usable Marijuana

(1) A producer or grower must test every batch from a harvest lot of marijuana or usable marijuana intended for use by a consumer or patient prior to selling or transferring the marijuana or usable marijuana for the following:

(a) Pesticides in accordance with OAR 333-007-0400.

(b) Water activity and moisture content in accordance with OAR 333-007-0420.

(c) THC and CBD concentration in accordance with OAR 333-007-0430.

(2) A producer or grower must test every batch from a harvest lot of marijuana or usable marijuana intended for use by a processor or processing site in making a cannabinoid concentrate or extract for water activity and moisture content in accordance with OAR 333-007-0420 unless the processor or processing site uses a method of processing that results in effective sterilization.

(3) A producer or grower must test every batch from a harvest lot of marijuana or usable marijuana intended for use by a processor or processing site in making a cannabinoid product for the following:

(a) Pesticides in accordance with OAR 333-007-0400.

(b) Water activity and moisture content in accordance with OAR 333-007-0420 unless the processor or processing site uses a method of processing that results in effective sterilization.

(4) A producer or grower must test one or more batches from a harvest lot of marijuana or usable marijuana for microbiological contaminants in accordance with OAR 333-007-0390, upon written request by the Authority or the Commission.

(5) In lieu of ordering and arranging for the sampling and testing required in this rule a producer may transport batches of marijuana or usable marijuana to a wholesaler licensed by the Commission under ORS 475B.100 and the wholesaler may order and arrange for the sampling and testing of the batches, in accordance with rules established by the Commission.

Stat. Auth.: ORS 475B.555

Stats. Implemented: ORS 475B.555

Hist.: PH 22-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 35-2016(Temp), f. & cert. ef. 12-2-16 thru 5-30-17; PH 38-2016(Temp), f. 12-13-16, cert. ef. 12-15-16 thru 5-30-17; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-007-0330

Compliance Testing Requirements for Cannabinoid Concentrates and Extracts

(1) A processor or processing site must test every process lot of cannabinoid concentrate or extract for use by a consumer or patient prior to selling or transferring the cannabinoid concentrate or extract for the following:

(a) Pesticides in accordance with OAR 333-007-0400.

(b) Solvents in accordance with OAR 333-007-0410.

(c) THC and CBD concentration in accordance with OAR 333-007-0430.

(2) A processor or processing site must test every process lot of a cannabinoid concentrate or extract intended for use by a processor or processing site to make a cannabinoid product for the following:

(a) Pesticides in accordance with OAR 333-007-0400.

(b) Solvents in accordance with OAR 333-007-0410.

(3) A processor or processing site is exempt from testing for solvents under this rule if the processor or processing site:

(a) Did not use any solvent listed in OAR 333-007-0410, Table 4; and

(b) Only used a mechanical extraction process to separate cannabinoids from the marijuana; or

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(c) Used only water, animal fat or vegetable oil as a solvent to separate the cannabinoids from the marijuana.

(4) A processor or processing site must test a process lot of a cannabinoid concentrate or extract for microbiological contaminants in accordance with OAR 333-007-0390, upon written request by the Authority or the Commission.

(5) In lieu of ordering and arranging for the sampling and testing required in this rule a processor may transport batches of cannabinoid concentrates or extracts to a wholesaler licensed by the Commission under ORS 475B.100 and the wholesaler may order and arrange for the sampling and testing of the batches, in accordance with rules established by the Commission.

Stat. Auth.: ORS 475B.555
Stats. Implemented: ORS 475B.555
Hist.: PH 22-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-007-0340

Compliance Testing Requirements for Cannabinoid Products Intended for Human Consumption or Ingestion and Cannabinoid Suppositories

(1) A processor or processing site must test every process lot of a cannabinoid product intended for human consumption or ingestion, including cannabinoid edibles, capsules, and tinctures, and cannabinoid suppositories for use by a consumer or patient prior to selling or transferring the cannabinoid product for THC and CBD concentration in accordance with OAR 333-007-0430.

(2) A processor or processing site must test a process lot for microbiological contaminants in accordance with OAR 333-007-0390, upon written request by the Authority or the Commission.

(3) In lieu of ordering and arranging for the sampling and testing required in this rule a processor may transport batches of cannabinoid products references in section (1) of this rule to a wholesaler licensed by the Commission under ORS 475B.100 and the wholesaler may order and arrange for the sampling and testing of the batches, in accordance with rules established by the Commission.

Stat. Auth.: ORS 475B.555
Stats. Implemented: ORS 475B.555
Hist.: PH 22-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-007-0345

Compliance Testing Requirements for Cannabinoid Topicals and Cannabinoid Transdermal Patches

(1) A processor or processing site must test every process lot of a cannabinoid topical or transdermal patch for use by a consumer or patient prior to selling or transferring the cannabinoid product for THC and CBD concentration in accordance with OAR 333-007-0430.

(2) A processor or processing site must test a process lot of a cannabinoid topical or transdermal patch for microbiological contaminants in accordance with OAR 333-007-0390, upon written request by the Authority or the Commission.

(3) In lieu of ordering and arranging for the sampling and testing required in this rule a processor may transport batches of cannabinoid products references in section (1) of this rule to a wholesaler licensed by the Commission under ORS 475B.100 and the wholesaler may order and arrange for the sampling and testing of the batches, in accordance with rules established by the Commission.

Stat. Auth.: ORS 475B.555
Stats. Implemented: ORS 475B.555
Hist.: PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-007-0350

Batch Requirements for Compliance Testing

(1) Usable marijuana. A producer or grower must separate each harvest lot into no larger than 15 pound batches.

(2) Cannabinoid concentrates and extracts.

(a) A process lot is considered a batch.

(b) The size of a process lot submitted for sampling and testing for purposes of a control study under OAR 333-007-0440 defines the maximum process lot for that concentrate, extract or product for purposes of sampling and testing after a control study has been certified.

(3) Cannabinoid products. A processor or processing site must separate process lots into not larger than 35,000 unit of sale batches.

(4) A grower and processing site must assign each batch a unique batch number and that unique batch number must be:

(a) Documented and maintained in the grower and processing site records for at least two years and available to the Authority upon request;

(b) Provided to the individual responsible for taking samples; and

(c) Included on the batch label as required in OAR 333-007-0380.

(5) A grower and processing site may not reuse a unique batch number.

Stat. Auth.: ORS 475B.555
Stats. Implemented: ORS 475B.555
Hist.: PH 22-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 35-2016(Temp), f. & cert. ef. 12-2-16 thru 5-30-17; PH 38-2016(Temp), f. 12-13-16, cert. ef. 12-15-16 thru 5-30-17; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-007-0360

Sampling and Sample Size Requirements for Compliance Testing

(1) Usable marijuana.

(a) Usable marijuana may only be sampled after it is cured, unless the usable marijuana is intended for sale or transfer to a processor or processing site to make a cannabinoid concentrate or extract.

(b) Sample increments taken must in total represent a minimum of 0.5 percent of the batch, consistent with the laboratory's accredited sampling policies and procedures, described in OAR 333-064-0100(2).

(c) A portion of sample increments taken from multiple batches of usable marijuana from the same harvest lot may be combined into one sample for purposes of testing for THC and CBD if the batches are the same strain, regardless of the size of the multiple batches.

(2) Cannabinoid concentrates, extracts and products.

(a) Until a control study has been certified under OAR 333-007-0440, the minimum number of sample increments that must be taken are established in Exhibit B, Table 5 or 6, incorporated by reference. Enough sample increments from a batch must be taken to determine whether the batch is homogenous and must be taken in a manner consistent with the laboratory's accredited sampling policies and procedures described in OAR 333-064-0100(2).

(b) If a cannabinoid concentrate or extract has a certified control study, the minimum number of sample increments that must be taken for future batches of that concentrate or extract are established in Exhibit B, Table 7, incorporated by reference. The sample increments may be combined into a primary sample and a field duplicate sample in accordance with OAR 333-007-0440(9) and OAR 333-064-0100(2). The primary sample and the field duplicate sample must be prepared and analyzed separately.

(c) For a cannabinoid product that has certified a control study, at a minimum one unit of sale chosen at random is required for the primary sample and one unit of sale chosen at random is required for the field duplicate sample for testing future batches of that product in accordance with OAR 333-007-0440(9) and OAR 333-064-0100(2). The primary sample and the field duplicate sample must be prepared and analyzed separately.

(3) Sufficient sample increments must be taken for analysis of all required tests and the quality control performed by the testing laboratory for these tests.

Stat. Auth.: ORS 475B.555
Stats. Implemented: ORS 475B.555
Hist.: PH 22-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 35-2016(Temp), f. & cert. ef. 12-2-16 thru 5-30-17; PH 38-2016(Temp), f. 12-13-16, cert. ef. 12-15-16 thru 5-30-17; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-007-0370

Sampling Personnel Requirements; Sampling Recordkeeping

(1) Only individuals employed by a laboratory with an ORELAP accredited scope item for sampling under these rules may take samples.

(2) Sampling may be conducted at a licensee's or registrant's premises or the licensee or registrant may transport the batch to a laboratory with an ORELAP accredited scope item for sampling under these rules.

(3) If a producer or wholesaler transports marijuana or usable marijuana to a laboratory for compliance testing for pesticides all the batches from the harvest lot must be transported so the laboratory can choose which batches to sample from.

Stat. Auth.: ORS 475B.555
Stats. Implemented: ORS 475B.555
Hist.: PH 22-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-007-0390

Standards for Microbiological Contaminants Compliance Testing

(1) A marijuana item required to be tested for microbiological contaminants under OAR 333-007-0320 to 333-007-0345 must be sampled using appropriate aseptic technique and tested by a laboratory for total coliform count.

(2) If a laboratory detects the presence of any coliforms the sample must be assessed for *Escherichia coli* (*E. coli*).

ADMINISTRATIVE RULES

(3) A batch fails microbiological contaminant testing if the laboratory detects the presence of *E. coli* at more than 100 colony forming units per gram in a sample:

- (a) During an initial test where no reanalysis is requested; or
- (b) Upon reanalysis as described in OAR 333-007-0450(1).

Stat. Auth.: ORS 475B.555

Stats. Implemented: ORS 475B.555

Hist.: PH 22-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-007-0400

Standards for Pesticides Compliance Testing

(1) A marijuana item required to be tested for pesticides must be tested by a laboratory for the analytes listed in Exhibit A, Table 3, incorporated by reference. [Table not included. See ED. NOTE.]

(2) A batch fails pesticide testing if a laboratory detects the presence of a pesticide above the action levels listed in Exhibit A, Table 3 in a sample:

- (a) During an initial test where no reanalysis is requested; or
- (b) Upon reanalysis as described in OAR 333-007-0450(1). [Table not included. See ED. NOTE.]

(3) The Authority will review and update, if necessary, the analytes listed in Exhibit A, Table 3, at least every two years.

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

Stat. Auth.: ORS 475B.555

Stats. Implemented: ORS 475B.555

Hist.: PH 22-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-007-0410

Standards for Solvents Compliance Testing

(1) A marijuana item required to be tested for solvents must be tested by a laboratory for the analytes listed in Exhibit A, Table 4 incorporated by reference.

(2) A batch fails solvent testing if a laboratory, during an initial test where no reanalysis is requested or upon reanalysis as described in OAR 333-007-0450(1):

(a) Detects the presence of a solvent above the action level listed in Exhibit A, Table 4 in a sample; or [Table not included. See ED. NOTE.]

(b) Calculates a RPD of more than 20 percent between the field primary result and the field duplicate result if the mean result is greater than half the action level for any analyte listed in Exhibit A, Table 4.

(3) The Authority will review and update, if necessary, the analytes listed in Exhibit A, Table 4, at least every two years [ED. NOTE: Tables referenced are not included in rule text.

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

Stat. Auth.: ORS 475B.555

Stats. Implemented: ORS 475B.555

Hist.: PH 22-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 35-2016(Temp), f. & cert. ef. 12-2-16 thru 5-30-17; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-007-0420

Standards for Testing Water Activity and Moisture Content

(1) Usable marijuana must be tested by a laboratory for:

- (a) Water activity; and
- (b) Moisture content.

(2) If a sample has a water activity rate of more than 0.65 A_w the sample fails.

(3) If a sample has a moisture content of more than 15 percent the result must be reported to the licensee but the sample does not fail.

Stat. Auth.: ORS 475B.555

Stats. Implemented: ORS 475B.555

Hist.: PH 22-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-007-0430

Standards for THC and CBD Compliance Testing

(1) A laboratory must test for the following when testing a marijuana item for potency:

- (a) THC.
- (b) THCA.
- (c) CBD.
- (d) CBDA.

(2) A process lot of a cannabinoid concentrate, extract or product that has not successfully completed a control study fails potency testing if, based on an initial test where no reanalysis is requested or upon reanalysis as described in OAR 333-007-0450(1):

(a) The amount of THC, as calculated pursuant to OAR 333-064-0100, between samples taken from the batch exceeds 30 percent RSD; or

(b) The amount or percentage of THC, as calculated pursuant to OAR 333-064-0100, exceeds the maximum concentration limits permitted in package by over 10 percent as specified in OAR 333-007-0200 to 333-007-0220, as applicable.

(3) A process lot of a cannabinoid concentrate, extract or product that has successfully completed a control study fails potency testing if, based on an initial test where no reanalysis is requested or upon reanalysis as described in OAR 333-007-0450(1):

(a) The amount of THC, as calculated pursuant to OAR 333-064-0100, between the sample and the field duplicate exceeds 20 percent RPD; or

(b) The amount or percentage of THC, as calculated pursuant to OAR 333-064-0100, exceeds the maximum concentration limits permitted in a package by over 10 percent as specified in OAR 333-007-0200 to 333-007-0220, as applicable

(4) A sample cannot fail CBD testing.

(5) Notwithstanding section (2)(a) and (3)(a) of this rule, a sample that has less than 5 mg of THC as calculated pursuant to OAR 333-064-0100 does not fail potency testing based on exceedance of the RSD or RPD as described in section (2)(a) or (3)(a) of this rule.

Stat. Auth.: ORS 475B.555

Stats. Implemented: ORS 475B.555

Hist.: PH 22-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 35-2016(Temp), f. & cert. ef. 12-2-16 thru 5-30-17; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-007-0440

Control Study

(1) A laboratory may perform a control study on a process lot of cannabinoid concentrates, extracts or products for a processor or processing site if the processor or processing site informs the laboratory, in writing:

(a) That sampling and testing is for the purposes of a control study; and

(b) For cannabinoid products, the expected THC range for the product.

(2) Sample increments taken for purposes of a control study may not be combined.

(3) Sample increments from a cannabinoid concentrate or extract must be tested for:

(a) Pesticides in accordance with OAR 333-007-0400.

(b) Solvents in accordance with OAR 333-007-0410.

(c) On and after July 1, 2017, THC concentration in accordance with OAR 333-007-0430 if the concentrate or extract is intended to be transferred or sold directly to a consumer or patient.

(4) Sample increments from a cannabinoid product must be tested for THC concentration in accordance with OAR 333-007-0430, as calculated pursuant to OAR 333-064-0100.

(5) During a control study a batch passes:

(a) Pesticide testing if each sample increment is below the action limit established in OAR 333-007-0400.

(b) Solvent testing if each sample increment is below the action limit established in OAR 333-007-0410; and

(c) THC concentration testing if:

(A) The amount of THC, as calculated pursuant to OAR 333-064-0100, between sample increments taken from the batch does not exceed 30 percent RSD; and

(B) The amount or percentage of THC as calculated pursuant to OAR 333-064-0100 for any sample increment does not exceed the maximum concentration limit permitted in a package by more than 10 percent as specified in OAR 333-007-0200 to 333-007-0220, as applicable.

(6) A laboratory must identify on a form prescribed by the Authority if a batch undergoing a control study has passed for any of the following, and must send the form at the client's request to the Authority or the Commission:

(a) Pesticides, if applicable.

(b) Solvents, if applicable.

(c) THC concentration as calculated pursuant to OAR 333-064-0100, if applicable.

(7) A control study fails if:

(a) Any sample increment exceeds an action limit in OAR 333-007-0400 (Pesticides) or 333-007-0410 (Solvents).

(A) A sample increment that exceeds an action limit may not be reanalyzed and retested under OAR 333-007-0450(1) unless the laboratory determines that the result is due to laboratory error and the laboratory error is reported to the Authority or the Commission.

ADMINISTRATIVE RULES

(B) A batch that has a sample increment fail for exceeding an action limit in OAR 333-007-0400 or 333-007-0410 may not be remediated under OAR 333-007-0450(5)(a) or (7)(c) for purposes of passing the control study.

(C) A batch that has a sample increment fail for exceeding an action limit in OAR 333-007-0400 or 333-007-0410 may be remediated for purposes of selling or transferring the cannabinoid concentrate, extract or product, if permitted under OAR 333-007-0450, but sample increments from that batch may not be resubmitted for a control study.

(b) The amount of THC in a cannabinoid concentrate, extract or product, as calculated pursuant to OAR 333-064-0100, between sample increments taken from the batch exceeds 30 percent RSD.

(c) The amount or percentage of THC as calculated pursuant to OAR 333-064-0100, exceeds the maximum concentration limit permitted in a package by more than 10 percent as specified in OAR 333-007-0200 to 333-007-0220, as applicable.

(A) A batch that has a sample increment fail under subsections (b) or (c) of this section may not be re-mixed or re-packaged under OAR 333-007-0450(8)(a) or (b) for purposes of passing the control study.

(B) A batch that has a sample increment fail under subsections (b) or (c) of this section may be re-mixed or re-packaged for purposes of selling or transferring the cannabinoid concentrate, extract or product as permitted under OAR 333-007-0450(8)(a) or (b), but sample increments from that batch may not be resubmitted for a control study.

(8) A process lot sampled and tested for purposes of a control study may be sold or transferred if the sample increments pass all the required tests.

(9) If a cannabinoid concentrate, extract or product successfully passes a control study and the control study has been certified by the Authority or the Commission, as applicable, the following applies to sampling and testing of future batches for one year:

(a) For cannabinoid concentrates and extracts, sample increments may be collected and combined into a primary sample and a field duplicate sample as described in OAR 333-007-0360, Exhibit B, Table 7, OAR 333-064-0100, ORELAP-SOP-002 Rev. 3.1.

(b) For cannabinoid products, at a minimum, one unit of sale must be collected, at random, for the primary sample, and one unit of sale must be collected at random for the field duplicate sample.

(c) Both the primary sample and the field duplicate sample must be prepared and analyzed individually.

(10) The certification of a control study is invalidated:

(a) If a processor or processing site makes any changes:

(A) To the standard operating procedures for that product.

(B) In the type of ingredient in the product.

(b) If a cannabinoid concentrate, extract or product fails a THC test under OAR 333-007-0430(3)(a).

(11) For purposes of subsection (10)(a) of this rule it is not considered a change to standard operating procedures or a change in the type of ingredient if the processor or processing site is using:

(a) Different strains of usable marijuana in batches.

(b) An ingredient with a different level of purity as long as the purity of the ingredient complies with the Authority's or the Commission's processing rules.

(c) Different flavors or colors in batches, as long as the different flavors or colors do not have an effect on the potency of the product.

(12) A processor or processing site does not qualify for reduced sampling and testing under a control study until either the Authority or Commission:

(a) Reviews documentation associated with the control study;

(b) Certifies the control study; and

(c) Notifies the laboratory and the processor that the control study is considered certified.

(13) If a processor or processing site does not have a certified control study it must have the cannabinoid concentrate, extract or product sampled in accordance with Exhibit B, Tables 5 and 6 and the sample increments prepared and analyzed separately.

Stat. Auth.: ORS 475B.555

Stats. Implemented: ORS 475B.555

Hist.: PH 22-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 35-2016(Temp), f. & cert. ef. 12-2-16 thru 5-30-17; PH 38-2016(Temp), f. 12-13-16, cert. ef. 12-15-16 thru 5-30-17; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-007-0450

Failed Test Samples

(1) If a sample or a field duplicate sample (collectively referred to as "sample" for purposes of this rule) fails any initial test the laboratory that did the testing may reanalyze the sample. The laboratory that did the initial

test may not subcontract the reanalysis. If a primary sample or a field duplicate sample fails, both must be reanalyzed. If the sample passes, another laboratory must resample the batch and confirm that result in order for the batch to pass testing.

(a) If a registrant or licensee wishes to have a sample reanalyzed, the registrant or licensee must request a reanalysis within seven calendar days from the date the laboratory sent notice of the failed test to the registrant or licensee. The reanalysis must be completed by the laboratory within 30 days from the date the reanalysis was requested.

(b) If a registrant or licensee has requested a reanalysis in accordance with subsection (1)(a) of this rule and the sample passes, the registrant or licensee has seven calendar days from the date the laboratory sent notice of the passed test to request that another laboratory resample the batch and confirm the passed test result. The retesting must be completed by the second laboratory within 30 days from the date the retesting was requested.

(c) A registrant or licensee must inform the Authority or the Commission immediately, of the following, in a manner prescribed by the Authority or the Commission:

(A) A request for reanalysis of a sample;

(B) The testing results of the reanalysis;

(C) A request for retesting; and

(D) The results of retesting.

(2) If a sample fails a test or a reanalysis under section (1) of this rule the batch:

(a) May be remediated or sterilized in accordance with this rule; or

(b) If it is not or cannot be remediated or sterilized under this rule, must be destroyed in a manner specified by the Authority or the Commission.

(3) If a licensee or registrant is permitted under this rule to sell or transfer a batch that has failed a test, the licensee or registrant must notify the licensee or registrant to whom the batch is sold or transferred of the failed test.

(4) Failed microbiological contaminant testing.

(a) If a sample from a batch of usable marijuana fails microbiological contaminant testing the batch may be used to make a cannabinoid concentrate or extract if the processing method effectively sterilizes the batch, such as a method using a hydrocarbon based solvent or a CO2 closed loop system.

(b) If a sample from a batch of a cannabinoid concentrate or extract fails microbiological contaminant testing the batch may be further processed if the processing method effectively sterilizes the batch, such as a method using a hydrocarbon based solvent or a CO2 closed loop system.

(c) A batch that is sterilized in accordance with subsection (a) or (b) of this section must be sampled and tested in accordance with these rules and must be tested if not otherwise required for that product, for microbiological contaminants, solvents and pesticides.

(d) A batch that fails microbiological contaminant testing after undergoing a sterilization process in accordance with subsection (a) or (b) of this section must be destroyed in a manner specified by the Authority or the Commission.

(5) Failed solvent testing.

(a) If a sample from a batch fails solvent testing the batch may be remediated using procedures that would reduce the concentration of solvents to less than the action level.

(b) A batch that is remediated in accordance with subsection (a) of this section must be re-sampled and re-tested in accordance with these rules and must be tested if not otherwise required for that product under these rules, for solvents and pesticides.

(c) A batch that fails solvent testing that is not remediated or that if remediated fails testing must be destroyed in a manner specified by the Authority or the Commission.

(6) Failed water activity testing.

(a) If a sample from a batch of usable marijuana fails for water activity the batch from which the sample was taken may:

(A) Be used to make a cannabinoid concentrate or extract; or

(B) Continue to dry or cure.

(b) A batch that undergoes additional drying or curing as described in paragraph (a)(B) of this section must be sampled and tested in accordance with these rules.

(7) Failed pesticide testing.

(a) If a sample from a batch of usable marijuana fails pesticide testing the batch may not be remediated and must be destroyed as ordered by the Authority or the Commission, except as permitted under subsection (c) of this section. A batch may not be destroyed without obtaining permission from the Authority or the Commission.

ADMINISTRATIVE RULES

(b) The Authority must report to the Oregon Department of Agriculture all test results that show that a sample of usable marijuana failed a pesticide test.

(c) If a sample from a batch of usable marijuana fails pesticide testing but only for the analytes piperonyl butoxide or pyrethrins, and the Oregon Department of Agriculture determines that the products used were listed on the Department's Guidelist for Pesticides and Cannabis and the product was applied in accordance with the label, the Authority or the Commission may permit the producer or grower to remediate the usable marijuana using procedures that would reduce the concentration of pesticides to less than the action level. A batch of usable marijuana that is permitted to be remediated must be re-sampled and re-tested for pesticides in accordance with these rules.

(d) If a processor or a processing site is only processing with usable marijuana that has passed pesticide testing under OAR 333-007-0320 and a sample from a batch of a cannabinoid concentrate or extract fails pesticide testing the batch may be remediated using procedures that would reduce the concentration of pesticides to less than the action level.

(e) A batch that is remediated in accordance with subsection (d) of this section must be re-sampled and re-tested in accordance with these rules. A batch that is remediated but after being re-sampled and re-tested fails pesticide testing must be destroyed as ordered by the Authority or the Commission.

(8) Failed potency testing.

(a) A marijuana item that fails potency testing under OAR 333-007-0430(2)(b) or (3)(b) may be repackaged in a manner that enables the item to meet the concentration limit standards in OAR 333-007-0210 and 333-007-0220, as applicable. A marijuana item that is repackaged in accordance with this subsection must be re-sampled and re-tested in accordance with these rules.

(b) A marijuana item that fails potency testing under OAR 333-007-0430(2)(a) or (3)(a) may be re-mixed in an effort to meet the standards in OAR 333-007-0430(2)(a) or (3)(a). A marijuana item that is re-mixed must be re-sampled and re-tested in accordance with these rules.

(9) If a sample fails a test after undergoing remediation or sterilization as permitted under this rule the batch must be destroyed in a manner approved by the Authority or the Commission.

(10) A registrant must inform a laboratory prior to samples being taken that the batch has failed a test and is being retested after undergoing remediation or sterilization.

(11) A registrant must, as applicable:

(a) Have detailed procedures for sterilization processes to remove microbiological contaminants and for reducing the concentration of solvents.

(b) Document all sampling, testing, sterilization, remediation and destruction that are a result of failing a test under these rules.

(12) If a batch fails a test under these rules a registrant:

(a) Must store and segregate the batch in a secure area and label the batch clearly to indicate it has failed a test and the label must include a test batch number.

(b) May not remove the batch from the registered premises without permission from the Authority.

Stat. Auth.: ORS 475B.555

Stats. Implemented: ORS 475B.555

Hist.: PH 22-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 35-2016(Temp), f. & cert. ef. 12-2-16 thru 5-30-17; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-007-0480

Audit and Random Testing

(1) The Authority may require a registrant to submit samples identified by the Authority to a laboratory of the registrant's choosing to be tested in order to determine whether a registrant is in compliance with OAR 333-007-0300 through 333-007-0500.

(2) A laboratory doing audit testing under section (1) of this rule must comply with these rules.

(3) The Authority may, at any time, require a registrant to permit the sampling of or submit a sample of a marijuana item to the Authority for testing. Such testing may include testing for:

(a) Any microbiological contaminant.

(b) Heavy metals.

(c) Other contaminants that may pose a risk to public health and safety.

(4) The Authority may require any testing ordered under sections (1) and (3) of this rule to be paid for by the registrant.

(5) The Authority may obtain a marijuana item from a registrant at any time and have it tested to ensure compliance with these rules and OAR chapter 333, division 8.

Stat. Auth.: ORS 475B.555

Stats. Implemented: ORS 475B.555

Hist.: PH 22-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 35-2016(Temp), f. & cert. ef. 12-2-16 thru 5-30-17; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-007-0500

Quality Control and Research and Development Testing

(1) A registrant or a licensee may request that a laboratory conduct testing for the purpose of assuring quality control or for research and development, except as provided in section (2) of this rule.

(2) A grower or producer may not request that a laboratory conduct pesticide testing on usable marijuana for the purpose of quality control or for research and development. A pesticide test on usable marijuana is considered by the Authority and the Commission to be a compliance test.

(3) A registrant or licensee that submits a marijuana item for quality control or research and development testing is not subject to OAR 333-007-0320 to 333-007-0470.

(4) A laboratory result from a quality control or research and development test cannot be used as a compliance test result and a marijuana item that has only undergone a quality control or research and development test may not be transferred or sold, unless the marijuana item is not required to have a compliance test before being transferred or sold.

(5) Registrants and licensees must maintain and retain all quality control and research and development test results for at least two years and provide copies of such results upon request to the Authority or the Commission.

Stat. Auth.: ORS 475B.555

Stats. Implemented: ORS 475B.555

Hist.: PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-007-2000

OLCC Licensee Pesticide Testing Requirements

(1) Notwithstanding OAR 333-007-0320, the Commission may establish the frequency of pesticide testing required by a producer or wholesaler as long as at least one-third of the batches in a harvest lot are tested. The producer or wholesaler must permit the laboratory that conducts the sampling to choose the batches to sample from and may not direct the laboratory to sample from specific batches.

(2) If any sample taken from a batch in accordance with section (1) of this rule fails a pesticide test, every batch from the harvest lot must be tested for pesticides.

(3) If all samples from each randomly chosen batch of a harvest lot pass pesticide testing, the entire harvest lot is considered to have passed pesticide testing and may be transferred or sold.

(4) A laboratory cannot be considered to be in violation of any accreditation standard for reporting test results in accordance with this rule.

Stat. Auth.: ORS 475B.555

Stats. Implemented: ORS 475B.555

Hist.: PH 6-2017(Temp), f. & cert. ef. 3-2-17 thru 8-28-17; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-008-0033

Approval of New or Renewal PRMG and Grow Site Application; Change of PRMG

(1) The Authority must register a PRMG and a grow site address listed on an application if:

(a) The PRMG:

(A) Meets the age requirements;

(B) Passes the criminal background check;

(C) Has not violated a provision of ORS 475B.400 to 475B.525, 475B.580, 475B.650, OAR chapter 333, division 7, these rules, or an ordinance adopted pursuant to ORS 475B.500; and

(D) Pays the applicable fee.

(b) The grow site address does not exceed the plant limits in ORS 475B.428(3) or (4).

(2) If the Authority registers a marijuana grow site it will issue an identification card and a grow site registration card that contains at least the following information:

(a) The PRMG's name, address, date of birth, and identification card number.

(b) The effective date, date of issuance, and expiration date of the identification card.

(c) The grow site address.

(d) The patient's registry identification card number.

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(3) A PRMG, except for a patient growing only for him or herself at his or her residence who is not transferring usable marijuana, seeds or immature plants to a registered processing site or dispensary, must create an online account with the Authority through which the individual must at a minimum submit the information required in OAR 333-008-0630.

(4) A PRMG is responsible for knowing how many immature and mature marijuana plants are legally permitted at the grow site address.

(5) The Authority shall also notify a patient if the PRMG and grow site address has been approved.

(6) The Authority may only register one grow site per patient, and may only register grow sites in Oregon.

Stat. Auth.: ORS 475B.420, 475B.525

Stats. Implemented: ORS 475B.420

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-008-0550

General Person Responsible for a Marijuana Grow Site Requirements

(1) A PRMG may not grow marijuana for more than four patients at any one time.

(2) A PRMG must display a marijuana grow site registration card at the marijuana grow site at all times for each patient for whom marijuana is being produced.

(3) All seeds, immature marijuana plants, mature marijuana plants and usable marijuana associated with the production of marijuana for a patient by a PRMG are the property of the patient and must be provided to the patient upon request, unless the patient has assigned a portion of the right to possess the seeds, immature plants and usable marijuana to the PRMG in accordance with ORS 475B.425.

(4) All marijuana produced for a patient must be provided to the patient or designated primary caregiver when the PRMG ceases producing marijuana for the patient, unless the patient has assigned a portion of the right to possess the seeds, immature plants and usable marijuana to the PRMG in accordance with ORS 475B.425.

(5) All usable marijuana associated with the production of marijuana for a patient must be transferred to a marijuana processing site upon the patient's request.

(6) All seeds, immature marijuana plants and usable marijuana associated with the production of marijuana for a patient must be transferred to a medical marijuana dispensary upon the patient's request.

(7) If a patient terminates the designation of a PRMG that PRMG may not be designated to produce marijuana by another patient unless the grow site address is authorized to have no more than 48 mature marijuana plants.

(8) A PRMG must return the grow site registration card to the Authority when the person's designation has been terminated by a patient or the person ceases producing marijuana for him or herself or another patient.

(9) A PRMG registered with the Authority, except for a patient growing only for him or herself at his or her own residence and not transferring usable marijuana, seeds or immature plants to a registered processing site or dispensary, must create an online account with the Authority through which the individual must at a minimum submit the information required in OAR 333-008-0630.

(10) A PRMG must comply with the advertising restrictions in OAR 333-008-2070 and must remove any sign, display or advertisement if the Authority determines the PRMG has violated OAR 333-008-2070.

(11) On and after July 1, 2017, a PRMG who transfers or sells usable marijuana to a registered processing site or sells or transfers seeds, immature plants or usable marijuana to a registered dispensary must own, maintain and use a weighing device that is licensed by the Oregon Department of Agriculture. Licensed weighing devices must be used by a PRMG whenever marijuana items are:

(a) Transferred to or from the PRMG to a registered processing site or dispensary and the transfer is by weight;

(b) Packaged for transfer by weight to a registered processing site or dispensary; or

(c) Weighed for purposes of documenting information required in OAR 333-008-0630 for transfers to registered processing sites or dispensaries.

(12) A PRMG may only use pesticides in accordance with ORS chapter 634 and OAR chapter 603, division 57.

(13) The Authority may investigate any violation of this rule based on:

(a) A failed pesticide test;

(b) Information provided by any other state agency;

(c) A grow site inspection; or

(d) The receipt of a complaint alleging unlawful pesticide use.

(14) If the Authority determines that a violation of section (12) of this rule has occurred, it may provide information obtained by the Authority to the Oregon Department of Agriculture in accordance with ORS 475B.460(5).

Stat. Auth.: ORS 475B.420 - 475B.428 & 475B.525

Stats. Implemented: ORS 475B.420 - 475B.428

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-008-0570

Designation of Plants at Grow Site Address

(1) A PRMG producing marijuana at a grow site where multiple PRMGs are registered must:

(a) Physically identify the marijuana plants at a grow site address that are being grown by that PRMG by either:

(A) Tagging each marijuana plant with the PRMG's name, identification card number and patient identification number; or

(B) Fencing or cordoning off the PRMG's marijuana plants and posting all grow site registration cards at the location where the plants are located; or

(b) Post a plot plan or graphic matrix depicting the plant layout configuration within the grow site and the PRMG and patient associated with each plant. For purposes of such grow site mapping, a keyed or alphanumeric legend must be included that includes means to confirm the assigned PRMG name and identification number and the patient name and identification number for each plant.

(2) If during an investigation the Authority determines that marijuana plants have not been designated by a PRMG in accordance with section (1) of this rule or there are marijuana plants at the grow site designated by an individual who is not authorized to produce marijuana at that grow site the Authority may suspend or revoke the registration of the grow site address for all PRMGs at that grow site and all the PRMG's identification cards.

(3) If during an investigation the Authority determines that a PRMG is producing marijuana plants in excess of the number of plants allowed in ORS 475B.428 the Authority may suspend or revoke the registration of the PRMG for each patient who has designated the PRMG.

(4) Each PRMG registered at a grow site is jointly and severally responsible for ensuring compliance with ORS 475B.428.

Stat. Auth.: ORS 475B.428, 475B.525

Stats. Implemented: ORS 475B.428

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-008-0600

PRMG Labeling, Packaging and Testing Requirements

A PRMG who transfers usable marijuana to a registered processing site or dispensary must comply with the labeling requirements in OAR 333-007-0010 to 333-007-0100, the packaging requirements in OAR 845-025-7000 to 845-025-7020 and 845-025-7060, and the testing requirements in OAR 333-007-0300 to 333-007-0500, including but not limited to assigning and documenting a unique batch number for each batch of usable marijuana, and providing that batch number to registered processing sites and dispensaries at the time of transfer or sale .

Stat. Auth.: ORS 475B.555

Stats. Implemented: ORS 475B.555

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16; PH 33-2016, f. & cert. ef. 11-28-16; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-008-1020

Medical Marijuana Dispensaries: Application for Medical Marijuana Dispensary Registration

(1) To register a medical marijuana dispensary a person must:

(a) Submit an initial application on a form prescribed by the Authority that includes but is not limited to:

(A) The name of the individual who owns the dispensary or, if a business entity owns the dispensary, the name of each individual who has a financial interest in the dispensary;

(B) The name of the individual or individuals responsible for the dispensary, if different from the name of the individual who owns the dispensary, with one of the individuals responsible for the dispensary identified as the primary PRD;

(C) The physical and mailing address of the medical marijuana dispensary; and

(b) Application and registration fee.

(2) An initial application for the registration of a dispensary must be submitted electronically via the Authority's website, www.healthoregon.org/ommp.

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(3) If an initial application is submitted along with the required fees the Authority will notify the applicant in writing that the application has been received and that within 30 calendar days of the date the written notice is mailed or sent electronically the following information must be received by the Authority:

(a) For each individual named in the application:

(A) A legible copy of the individual's valid government issued photographic identification that includes last name, first name and date of birth;

(B) Information, fingerprints and fees required for a criminal background check in accordance with OAR 333-008-2020; and

(C) An Individual History Form and any information identified in the form that is required to be submitted;

(b) A written statement from an authorized official of the local government that the proposed location of the dispensary is not located in an area that is zoned for residential use as that term is defined in OAR 333-008-0010;

(c) Proof that the business is registered or has filed an application to register as a business with the Oregon Office of the Secretary of State, including proof of registration for any DBA (doing business as) registration;

(d) Documentation, in a format prescribed by the Authority that the proposed location of the dispensary is not within 1,000 feet of:

(A) The real property comprising a public or private elementary or secondary school, except as provided in Oregon Laws 2016, chapter 83, section 29; or

(B) A registered dispensary.

(e) A scaled site plan of the parcel on which the premises proposed for registration is located, including:

(A) Cardinal directional references;

(B) Bordering streets and the names of the streets;

(C) Identification of the building or buildings in which the proposed dispensary is to be located;

(D) The dimensions of the proposed premises of the dispensary;

(E) Identification of other buildings or property owned by or under the control of the applicant on the same parcel or tax lot as the premises proposed for registration that will be used in the business; and

(F) Identification of any residences on the parcel or tax lot.

(f) A scaled floor plan of all enclosed areas of the premises at the proposed location that will be used in the business with the overall dimensions of the dispensary and the dimensions of interior rooms and spaces, a description of the intended uses of all spaces and clear identification and location of:

(A) Walls;

(B) Partitions;

(C) Counters;

(D) Windows;

(E) Safes;

(F) All areas of ingress and egress;

(G) All limited access areas;

(H) Secure rooms; and

(I) Designated limited access areas or designated areas required under OAR 333-008-1110(12); and

(g) Documentation that shows the applicant has lawful possession of the proposed location of the dispensary.

(4) The documentation required in section (3) of this rule may be submitted electronically to the Authority or may be mailed to the Oregon Medical Marijuana Program, Oregon Health Authority, PO Box 14116, Portland, OR 97293.

(a) If documentation is mailed it must be received by the Authority within 30 calendar days of the date the Authority mailed the notice to the applicant that the initial application was received or the application will be considered incomplete.

(b) If documentation is submitted electronically it must be received by the Authority by 5 p.m. Pacific Time within 30 calendar days of the date the Authority mailed the notice to the applicant that the initial application was received or the application will be considered incomplete.

(5) Application and registration fees must be paid online at the time of application.

(6) Criminal background check fees must be paid by check or money order and must be mailed to the Oregon Medical Marijuana Program, PO Box 14116, Portland, OR 97293, and must be received by the Authority in accordance with provisions in section (4) of this rule.

(7) If the Authority does not receive a complete application, including all documentation required in sections (1) and (3) of this rule, and all

required fees within the time frames established in this rule, the application will be declared incomplete.

(8) If an applicant provides the documentation required in section (3) of this rule the Authority will review the information to determine if it is sufficient.

(a) If the documentation required under section (3) of this rule is not complete or is insufficient the Authority must notify the applicant in writing and the applicant will have 10 calendar days from the date such written notice is mailed or sent electronically by the Authority to provide the additional documentation.

(b) If the applicant does not provide the additional documentation within 10 calendar days or if any responsive documents are incomplete, insufficient or otherwise do not demonstrate compliance with OAR 475B.450 and these rules the application will be declared incomplete.

(9) A person who wishes to register more than one location must submit a separate application, registration fees, and all documentation described in sections (1) and (3) of this rule for each location.

(10) An application that is declared incomplete is treated by the Authority as if it was never received.

Stat. Auth.: ORS 475B.450 & 475B.525

Stats. Implemented: ORS 475B.450

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 33-2016, f. & cert. ef. 11-28-16; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-008-1030

Dispensary Fees

(1) The initial fees for the registration of a dispensary are:

(a) A non-refundable application fee of \$500; and

(b) A \$3,500 registration fee.

(2) The annual renewal fees for the registration of a dispensary are:

(a) A \$500 non-refundable renewal fee; and

(b) A \$3,500 registration fee.

(3) The criminal background check fee is \$35 per individual.

(4) The Authority must return the registration fee if:

(a) An application is incomplete; or

(b) An applicant withdraws an application.

(5) The Authority may return the registration fee if an application is denied.

(6) For an application received on or after May 31, 2017 the Authority may not refund a registration fee if the Authority has issued the applicant a 60-day letter under OAR 333-008-1040(6) and the applicant subsequently withdraws the application or the applicant does not comply with the 60-day deadline or an extension deadline under OAR 333-0080-1040(7) or (8).

Stat. Auth.: ORS 475B.450 & 475B.525

Stats. Implemented: ORS 475B.450

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-008-1070

Expiration and Renewal of Dispensary Registration

(1) A dispensary's registration expires one year following the date of application approval.

(2) A dispensary registrant must submit not more than 90 but at least 30 calendar days before the registration expires:

(a) A renewal application on a form prescribed by the Authority;

(b) Renewal fees;

(c) For each individual named in the renewal application:

(A) A legible copy of the individual's valid government issued photographic identification that includes last name, first name and date of birth;

(B) Information, fingerprints and fees required for a criminal background check in accordance with OAR 333-008-2020;

(C) An Individual History Form and any information identified in the form that is required to be submitted; and

(d) Current proof of business registration with the Secretary of State, including all DBA (doing business as) registrations.

(3) A dispensary registrant who files a completed renewal application, fees and all the information required in section (2) of this rule with the Authority prior to the expiration date of the registration may continue to operate, even after the registration expiration date, pending a decision on the renewal application by the Authority.

(4) A dispensary registrant that does not submit timely renewal application, fees, and all the information required under section (2) of this rule may be denied or subject to the imposition of civil penalties.

(5) The Authority may notify a dispensary registrant who, prior to the registration's expiration, submits an incomplete application and may give the registrant 10 calendar days to submit the missing information. The

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Authority may deny the renewal application of a registrant who fails to comply with this section.

(6) Renewals will be processed in accordance with OAR 333-008-1040 to 333-008-1060, as applicable.

(7) A renewal applicant may be required to submit a Readiness Form, as described in OAR 333-008-1040 and may be subject to inspection prior to the Authority acting on a renewal application.

(8) For purposes of this rule a renewal application is considered complete when the Authority receives the completed application form, fees and information required in section (2) of this rule.

Stat. Auth.: ORS 475B.450 & 475B.525

Stats. Implemented: ORS 475B.450

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15; PH 16-2015(Temp), f. & cert. ef. 9-22-15 thru 3-19-16; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-008-1200

Medical Marijuana Dispensaries: Operation of Registered Dispensaries

(1) Policies and Procedures. In order to obtain a registration and to retain registration a dispensary registrant must have written detailed policies and procedures and training for employees on the policies and procedures that, at a minimum, cover the following:

- (a) Security;
- (b) Transfers of marijuana items to and from the dispensary;
- (c) Operation of a registered dispensary;
- (d) Required record keeping;
- (e) Testing requirements, including review of testing results prior to accepting transfers of marijuana items;
- (f) Packaging and labeling requirements;
- (g) Employee training;
- (h) Compliance with these rules, including but not limited to violations and enforcement; and
- (i) Roles and responsibilities for employees and PRDs in assisting the Authority during inspections or investigations.

(2) Employees. A registered dispensary may employ an individual between the ages of 18 and 20 if the individual is a patient. Otherwise, dispensary employees must be 21 years of age or older.

(3) Standardized Scales. In order to obtain a registration and to retain registration a dispensary registrant must own, maintain on the premises and use a weighing device that is licensed by the Oregon Department of Agriculture. Licensed weighing devices must be used by a registered dispensary whenever marijuana items are:

- (a) Transferred to or from the dispensary and the transfer is by weight;
- (b) Packaged for transfer by weight; or
- (c) Weighed for purposes of documenting information required in OAR 333-008-1230, 333-008-1245, 333-008-1247 and 333-008-1248.

(4) Inventory Tracking and Point of Sale System: In order to obtain a registration and to retain registration a registered dispensary must have an installed and fully operational integrated inventory tracking and point of sale system that can and does, at a minimum:

- (a) Produce bar codes or similar unique identification numbers for each marijuana item lot transferred to a registered dispensary;
- (b) Trace back or link each transfer of a marijuana item to a patient or caregiver to the marijuana item lot;
- (c) Capture all information electronically that is required to be documented in OAR 333-008-1230 and 333-008-1245;
- (d) Generate inventory, transaction, and transfer reports viewable in excel format; and
- (e) Produce all the information required to be submitted to the Authority pursuant to OAR 333-0080-1248.

(5) Online Verification of Registration Status. A dispensary must verify an individual's registration status with the Authority when receiving or making the transfer of a marijuana item if the Authority has available an online system for such verification.

(6) Inventory On-Site. Marijuana items must be kept on-site at the dispensary. The Authority may take enforcement action against a dispensary registrant if during an inspection a dispensary registrant cannot account for its inventory or if the amount of usable marijuana at the registered dispensary is not within five percent of the documented inventory.

(7) Testing. A dispensary registrant may not accept a transfer of a marijuana item that has not been tested in accordance with OAR 333-007-0300 to 333-007-0500 or that has failed a test under OAR 333-007-0450.

(8) Packaging and Labeling. A dispensary may not accept a transfer of a marijuana item or transfer a marijuana item that does not comply with the labeling requirements in OAR 333-007-0010 to 333-007-0100, or that

does not comply with the packaging requirements in OAR 845-025-7000 to 845-025-7020 and 845-025-7060.

(9) Oregon Department of Agriculture Licensure. A registered dispensary that sells or handles food, as that term is defined in ORS 616.695, or a cannabinoid concentrate, extract or product intended for human consumption as that term is defined in OAR 333-007-0020, must be licensed by the Oregon Department of Agriculture under ORS 616.706.

(10) Industrial Hemp Products.

(a) A dispensary may only accept the transfer of and may only transfer a product that contains THC or CBD that is derived from marijuana.

(b) Nothing in this section prohibits a dispensary from buying or selling hemp products not intended for human application, consumption, inhalation, ingestion, or absorption, such as hemp clothing.

(11) Tobacco and Nicotine. A dispensary may not offer or sell tobacco or nicotine products in any form including, but not limited to, loose tobacco, pipe tobacco, cigarettes as defined in ORS 323.010, cigarillos as that is defined in OAR 333-015-0030, liquid nicotine containers as that is defined in OAR 333-007-0305 or pre-filled nicotine inhalant delivery devices.

(12) For purposes of this rule "marijuana item lot" means a quantity of seeds, immature plants, usable marijuana, medical cannabinoid products, concentrates or extracts transferred to a registered dispensary at one time and that is from the same harvest lot or process lot as those terms are defined in OAR 333-007-0020.

Stat. Auth.: ORS 475B.450 & 475B.525

Stats. Implemented: ORS 475B.450

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 26-2016(Temp), f. & cert. ef. 9-9-16 thru 3-7-17; PH 27-2016(Temp), f. & cert. ef. 9-30-16 thru 3-1-17; PH 33-2016, f. & cert. ef. 11-28-16; PH 41-2016(Temp), f. 12-23-16, cert. ef. 12-31-16 thru 6-28-17; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-008-1205

Registered Dispensary Signage

(1) In order to obtain a registration and to retain registration a dispensary registrant must post:

(a) At every entrance to the dispensary:

(A) "Medical Marijuana Patients Only".

(B) "No On-Site Consumption of Marijuana".

(b) At all areas of ingress to a limited access area signs that reads:

(A) "Restricted Access Area — Authorized Personnel Only".

(B) "No Minors Allowed".

(c) At all areas of ingress to a point of sale area a sign that reads: "Restricted Access Area — No Minors Allowed".

(d) At the point of sale, the following posters prescribed by the Authority, measuring 22 inches high by 17 inches wide that can be downloaded at www.healthoregon.org/ommp:

(A) A Pregnancy Warning Poster; and

(B) A Poisoning Prevention Poster.

(2) All signs required by this rule must be:

(a) Legible, not less than 8 1/2 inches by and 11 inches, composed of letters not less than one-half inch in height;

(b) In English and Spanish, if a Spanish version is available through the Authority; and

(c) Posted in a conspicuous location where the signs can be easily read by individuals entering or on the dispensary premises.

(3) All signs may be downloaded at www.healthoregon.org/ommp.

Stat. Auth.: ORS 475B.450 & 475B.525

Stats. Implemented: ORS 475B.450

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-008-1230

Medical Marijuana Dispensaries: Transfers to a Registered Dispensary

(1) Transfer of Usable Marijuana, Seeds and Immature Plants. A patient, caregiver, or PRMG may transfer usable marijuana, seeds and immature plants produced by a PRMG to a registered dispensary, subject to the requirements in this rule.

(a) A registered dispensary may only accept a transfer of usable marijuana, seeds or immature marijuana plants from a caregiver or PRMG if the individual transferring the usable marijuana, seeds or immature plants provides the original or a copy of a valid:

(A) Authorization to Transfer form prescribed by the Authority; or

(B) Personal agreement as that is defined in OAR 333-008-0010.

(b) Authorization to Transfer Forms. In order to be valid an Authorization to Transfer form must include at least:

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(A) The patient's name, OMMP card number or receipt number and expiration date and contact information;

(B) The name and contact information of the individual who is authorized to transfer the usable marijuana, seeds or immature marijuana plants to the registered dispensary and that individual's OMMP card number and expiration date;

(C) The name and address of the registered dispensary that is authorized to receive the usable marijuana, seeds or immature marijuana plants; and

(D) The date the authorization expires, if earlier than the expiration date of the patient's OMMP card.

(c) Personal Agreements. In order to be valid a personal agreement must include at least:

(A) The patient's name, OMMP card number and expiration date and contact information;

(B) The name and contact information of the PRMG to whom the patient's property rights have been assigned and the producer's OMMP card number and expiration date, and the grow site address;

(C) The portion of the patient's rights to possess seeds, immature plants and usable marijuana that is being assigned to the producer.

(2) A registered dispensary may accept the transfer of usable marijuana from a producer licensed by the Commission under ORS 475B.070 who is also registered by the Commission to produce marijuana for a patient. The Commission licensed producer must provide the registered dispensary with:

(a) Proof of licensure under ORS 475B.070; and

(b) A copy of the patient agreement as described in OAR 845-025-2510.

(3) Transfer of medical cannabinoid products, concentrates, and extracts. A registered dispensary may only accept a transfer of a medical cannabinoid product, concentrate or extract from a registered medical marijuana processing site. The individual transferring the products, concentrates or extracts must provide the dispensary with a Processing Site Authorization to Transfer form prescribed by the Authority. In addition to retaining a copy of the Processing Site Authorization to Transfer form the dispensary must obtain a copy of the photo identification of the individual transferring the cannabinoid product, concentrate or extract as required in paragraph (4)(b)(B) of this rule.

(4) Transfer Records. At the time a marijuana item is transferred to a dispensary the dispensary registrant must:

(a) Document, on a form prescribed by the Authority, as applicable:

(A) The weight in metric units of all usable marijuana received by the registered dispensary;

(B) The number of seeds and immature plants received by the registered dispensary;

(C) The amount of a medical cannabinoid product, concentrate, or extract received by the registered dispensary, including, as applicable, the weight in metric units, or the number of units;

(D) The name of the marijuana item;

(E) The date the marijuana item was received;

(F) The harvest or process lot numbers, and batch numbers; and

(G) The amount paid by the registered dispensary.

(b) Obtain and maintain a copy of, as applicable:

(A) Documents required in sections (1) and (2) of this rule including the date it was received;

(B) The photo identification of the individual transferring the marijuana item to the dispensary, if such a copy is not already on file;

(C) The OMMP card of the individual transferring usable marijuana, seeds or immature plants;

(D) The medical marijuana processing site registration; and

(E) Test results for marijuana items transferred to the dispensary.

(c) Review laboratory testing results and confirm that the:

(A) Test results are associated with the marijuana items being transferred; and

(B) Marijuana item has passed all required testing.

(5) Nothing in these rules requires a dispensary registrant to accept a transfer of a marijuana item.

(6) All documentation required in this rule must be maintained electronically in an integrated inventory tracking and point of sale system or the electronic data management system described in OAR 333-008-1247.

Stat. Auth.: ORS 475B.450 & 475B.525

Stats. Implemented: ORS 475B.450

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 26-2016(Temp), f. & cert. ef. 9-9-16 thru 3-7-17; PH 33-2016, f. & cert. ef. 11-28-16; PH 41-2016(Temp), f. 12-23-16, cert. ef. 12-31-16 thru 6-28-17; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-008-1245

Transfers From a Registered Dispensary to a Patient or Designated Primary Caregiver

(1) A dispensary registrant must, prior to permitting an individual to enter a point of sale area on the dispensary premises verify that the individual is a current patient or designated primary caregiver.

(2) A registered dispensary must, prior to transferring a marijuana item to a patient or a designated primary caregiver:

(a) Verify the individual is currently registered with the Authority by viewing the individual's government issued photo identification and Authority issued patient or caregiver card, or the patient's receipt, as described in OAR 333-008-0023(6) or OAR 333-008-0040(5) and making sure the identities match.

(b) Obtain and retain, if not already on file, a copy of the patient's or caregiver's:

(A) OMMP identification card or receipt; and

(B) Government issued photo identification.

(c) Document:

(A) The name, OMMP card number and expiration date of the card of each person to whom the registered facility transfers a marijuana item;

(B) If the marijuana item was transferred to a designated primary caregiver, the patient's name and registration number for whom the caregiver was receiving the transfer;

(C) The amount of usable marijuana transferred in metric units, if applicable;

(D) The number of seeds or immature plants transferred, if applicable;

(E) The amount of a medical cannabinoid product concentrate, or extract, if applicable;

(F) The brand name of the marijuana item and a description of what was transferred;

(G) The date of the transfer; and

(H) The amount of money paid by the patient or designated primary caregiver for the transfer.

(3) A dispensary registrant may not transfer at any one time to a patient or designated primary caregiver, within one day, more than:

(a) 24 ounces of usable marijuana;

(b) 16 ounces of a medical cannabinoid product in solid form;

(c) 72 ounces of a medical cannabinoid product in liquid form;

(d) 16 ounces of a cannabinoid concentrate whether sold alone or contained in an inhalant delivery system;

(e) Five grams of a cannabinoid extract whether sold alone or contained in an inhalant delivery system;

(f) Four immature marijuana plants; and

(g) 50 seeds.

(4) All documentation required in this rule must be maintained electronically in an integrated inventory tracking and point of sale system or the electronic data management system described in OAR 333-008-1247.

Stat. Auth.: ORS 475B.450 & 475B.525

Stats. Implemented: ORS 475B.450

Hist.: PH 9-2014(Temp), f. & cert. ef. 4-1-14 thru 9-27-14; PH 25-2014, f. & cert. ef. 9-24-14; PH 9-2016, f. 2-26-16, cert. ef. 3-1-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-008-1248

Registered Dispensary Reporting to the Authority

(1) A PRD must submit to the Authority electronically in a manner specified by the Authority, by the 10th of each month, the following information:

(a) The amount of usable marijuana transferred to and by the medical marijuana dispensary during the previous month.

(b) The amount and type of medical cannabinoid products transferred to and by the medical marijuana dispensary during the previous month. For purposes of this section "type" means:

(A) Cannabinoid edibles;

(B) Cannabinoid topicals;

(C) Cannabinoid tinctures;

(D) Cannabinoid capsules;

(E) Cannabinoid suppositories;

(F) Cannabinoid transdermal patches and

(G) Cannabinoid product other than products listed in paragraphs (A)

to (F) of this subsection.

(c) The amount and type of cannabinoid concentrates transferred to and by the medical marijuana dispensary during the previous month. For purposes of this section "type" means:

(A) Cannabinoid concentrate in solid form; and

(B) Cannabinoid concentrate in liquid form.

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(d) The amount and type of cannabinoid extracts transferred to and by the medical marijuana dispensary during the previous month. For purposes of this section “type” means:

- (A) Cannabinoid extract in solid form; and
- (B) Cannabinoid extract in liquid form.

(e) The quantity of immature marijuana plants transferred to and by the medical marijuana dispensary during the previous month.

(f) The quantity of seeds transferred to and by the medical marijuana dispensary during the previous month.

(2) Information submitted to the Authority under this rule must:

(a) List each type of marijuana item separately;

(b) Provide the total aggregate amount of a type of marijuana item transferred to a dispensary by each patient, designated primary caregiver, PRMG, processing site or Commission licensed producer during the previous month; and

(c) Provide the total aggregate amount of a type of marijuana item transferred by a dispensary to each patient or designated primary caregiver during the previous month.

(3) In addition to submitting the information as required by section (1) of this rule, a person responsible for a dispensary must keep a record of the information described in section (1) of this rule for two years after the date on which the person submits the information to the Authority.

Stat. Auth.: ORS 475B.450 & 475B.525

Stats. Implemented: ORS 475B.450

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-008-1620

Medical Marijuana Processors: Application for Medical Marijuana Processing Site Registration

(1) This rule applies to any initial application filed on or after May 31, 2017 and to any initial application filed prior to May 31, 2017 that the Authority has not yet approved or denied.

(2) To register a medical marijuana processing site a person must:

(a) Submit an initial application on a form prescribed by the Authority that includes but is not limited to:

(A) The name of the individual who owns the processing site or, if a business entity owns the processing site, the name of each individual who has a financial interest in the processing site;

(B) The name of the individual or individuals responsible for the processing site, if different from the name of the individual who owns the processing site, with one of the individuals responsible for the processing site identified as the primary PRP;

(C) The physical and mailing address of the marijuana processing site; and

(b) Application and registration fees.

(c) An initial application for the registration of a processing site must be submitted electronically via the Authority’s website, www.healthoregon.org/ommp.

(3) If an initial application is submitted along with the required fees the Authority will notify the applicant that the initial application has been received and that within 30 calendar days of the date the written notice is mailed or sent electronically the following information must be received by the Authority:

(a) For each individual named in the application:

(A) A legible copy of the individual’s valid government issued photographic identification that includes last name, first name and date of birth;

(B) Information, fingerprints and fees required for a criminal background check in accordance with OAR 333-008-2020; and

(C) An Individual History Form and any information identified in the form that is required to be submitted.

(b) If the applicant intends to process extracts, proof from the local government that the proposed location of the processing site is not located in an area that is zoned for residential use;

(c) Proof that the business is registered or has filed an application to register as a business with the Oregon Office of the Secretary of State, including proof of registration of any DBA (doing business as) registration;

(d) A scaled site plan of the parcel or premises on which the premises proposed for registration, is located, including:

(A) Cardinal directional references;

(B) Bordering streets and the names of the streets;

(C) Identification of the building or buildings in which the proposed processing site is to be located;

(D) The dimensions of the proposed premises of the processing site;

(E) Identification of other buildings or property owned by or under the control of the applicant on the same parcel or tax lot as the premises proposed for registration that will be used in the business; and

(F) Identification of any residences on the parcel or tax lot.

(e) A scaled floor plan of all enclosed areas of the premises at the proposed location that will be used in the business with the overall dimensions of the dispensary and the dimensions of the interior rooms and spaces, a description of the intended uses of all spaces and clear identification and location of:

(A) Walls;

(B) Partitions;

(C) Counters;

(D) Windows;

(E) Safes;

(F) All areas of ingress and egress;

(G) All limited access areas;

(H) Secure rooms; and

(I) Designated limited access areas or designated areas required under OAR 333-008-1730(8);

(f) Documentation that shows the applicant has lawful possession of the proposed location of the processing site;

(g) A description of the type of products to be processed, a description of equipment to be used, including any solvents, gases, chemicals or other compounds used to create extracts or concentrates on a form prescribed by the Authority; and

(h) The proposed endorsements as described in OAR 333-008-1700.

(4) The information and documentation required in section (3) of this rule may be submitted electronically to the Authority or may be mailed to the Oregon Medical Marijuana Program, Oregon Health Authority, PO Box 14116, Portland, OR 97293.

(a) If documentation is mailed, it must be received by the Authority within 30 calendar days of the date the Authority mailed the notice to the applicant that the application was received or the application will be considered incomplete.

(b) If documentation is submitted electronically it must be received by the Authority within 30 calendar days of the date the Authority mailed the notice to the applicant that the application was received or the application will be considered incomplete.

(5) Application and registration fees must be paid online at the time of application.

(6) Criminal background check fees must be paid by check or money order and must be mailed to the Oregon Medical Marijuana Program, Oregon Health Authority, PO Box 14116, Portland, OR 97293 and must be received by the Authority in accordance with provisions in section (4) of this rule.

(7) If the Authority does not receive a complete application, all documentation required in sections (2) and (3) of this rule, and all required fees within the time frames established in this rule, the application will be declared incomplete.

(8) If the applicant provides the documentation required in section (3) of this rule, the Authority will review the information to determine if it is sufficient.

(a) If the documentation required under section (3) of this rule is not complete or is insufficient the Authority must notify the applicant in writing and the applicant will have 10 calendar days from the date such written notice is mailed or sent electronically by the Authority to provide the additional documentation.

(b) If the applicant does not provide the additional documentation within 10 calendar days or if any responsive documents are incomplete, insufficient or otherwise do not demonstrate compliance with ORS 475B.450 and these rules the application will be declared incomplete.

(9) A person who wishes to register more than one location must submit a separate application, registration fees, and all documentation described in sections (2) and (3) of this rule for each location.

(10) An application that is declared incomplete is treated by the Authority as if it was never received.

Stat. Auth.: ORS 475B.435

Stats. Implemented: ORS 475B.435

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 33-2016, f. & cert. ef. 11-28-16; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-008-1630

Processing Site Fees

(1) The initial fees for the registration of a processing site are:

(a) A non-refundable application fee of \$500; and

(b) A \$3,500 registration fee.

(2) The annual renewal fees for the registration of a processing site are:

(a) A \$500 non-refundable renewal fee; and

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- (b) A \$3,500 registration fee.
- (3) The criminal background check fee is \$35 per individual.
- (4) The Authority must return the registration fee if:
 - (a) An application is incomplete; or
 - (b) An applicant withdraws an application.
- (5) The Authority may return the registration fee if an application is denied.

(6) For an application received on or after May 31, 2017 the Authority may not refund a registration fee if the Authority has issued the applicant a 60-day letter under OAR 333-008-1650(6) and the applicant subsequently withdraws the application or the applicant does not comply with the 60-day deadline or an extension deadline under OAR 333-0080-1650(7) or (8).

Stat. Auth.: ORS 475B.435
Stats. Implemented: ORS 475B.435
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-008-1690

Expiration and Renewal of Registration for Processing Site

(1) A processing site's registration expires one year following the date of application approval.

(2) A processing site registrant must submit not more than 90 but at least 30 calendar days before the registration expires:

- (a) A renewal application on a form prescribed by the Authority;
- (b) Renewal fees;
- (c) For each individual named in the renewal application:

(A) A legible copy of the individual's valid government issued photographic identification that includes last name, first name and date of birth;

(B) Information, fingerprints and fees required for a criminal background check in accordance with OAR 333-008-2020; and

(C) An Individual History Form and any information identified in the form that is required to be submitted; and

(d) Current proof of business registration with the Secretary of State, including all DBA (doing business as) registrations.

(3) A processing site registrant who files a completed renewal application, fees, and all the information required in section (2) of this rule with the Authority prior to the expiration date of the registration may continue to operate, even after the registration expiration date, pending a decision on the renewal application by the Authority.

(4) A processing site registrant that does not submit a timely application, fees and all the information required in section (2) of this rule may be denied or subject to the imposition of civil penalties.

(5) The Authority may notify a processing site registrant who, prior to the registration's expiration, submits an incomplete application and may give the registrant 10 calendar days to submit the missing information. The Authority may deny the renewal application of a registrant who fails to comply with this section.

(6) Renewals will be processed in accordance with OAR 333-008-1650 to 333-008-1670, as applicable.

(7) A renewal applicant may be required to submit a Readiness Form, as described in OAR 333-008-1650(9) and may be subject to inspection prior to the Authority acting on a renewal application.

(8) For purposes of this rule, a renewal application is considered complete when the Authority receives the completed application form, fees and information required in section (2) of this rule.

Stat. Auth.: ORS 475B.435
Stats. Implemented: ORS 475B.435
Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-008-1760

Medical Marijuana Processors: Transfers to a Registered Processing Site

(1) Transfers of Marijuana by a Patient or Designated Primary Caregiver to Process for Return to a Patient. A patient or designated primary caregiver may transfer marijuana to a registered processing site for no compensation for the purpose of the registered processing site processing the marijuana into a cannabinoid product, concentrate or extract and returning the product, concentrate or extract to the patient or designated primary caregiver.

(a) If a designated primary caregiver is transferring the marijuana, a registered processing site may only accept a transfer of marijuana under this section if the caregiver provides the original or a copy of a valid Authorization to Transfer form prescribed by the Authority.

(b) In order to be valid an Authorization to Transfer form must include at least:

(A) The patient's name, OMMP card number, OMMP receipt number if applicable and expiration date and contact information;

(B) The name and contact information of the individual who is authorized to transfer the usable marijuana to the registered processing site and that individual's OMMP card number and expiration date;

(C) The name and address of the registered processing site that is authorized to receive the usable marijuana; and

(D) The date the authorization expires, if earlier than the expiration date of the patient's OMMP card or receipt.

(2) Transfer of Usable Marijuana. A patient, caregiver, or PRMG may transfer usable marijuana to a registered processing site, for no consideration, subject to the requirements in this rule.

(a) A registered processing site may only accept a transfer of usable marijuana if the individual transferring the usable marijuana provides the original or a copy of a valid:

- (A) Authorization to Transfer form prescribed by the Authority; or
- (B) Personal agreement as that is defined in OAR 333-008-0010.

(b) Authorization to Transfer Forms. In order to be valid an Authorization to Transfer form must include at least:

(A) The patient's name, OMMP card number and expiration date and contact information;

(B) The name and contact information of the individual who is authorized to transfer the usable marijuana to the registered processing site and that individual's OMMP card number and expiration date;

(C) The name and address of the registered processing site that is authorized to receive the usable marijuana; and

(D) The date the authorization expires, if earlier than the expiration date of the patient's OMMP card.

(c) Personal Agreements. In order to be valid a personal agreement must include at least:

(A) The patient's name, OMMP card number and expiration date and contact information;

(B) The name and contact information of the PRMG to whom the patient's property rights have been assigned and the producer's OMMP card number and expiration date;

(C) The portion of the patient's rights to possess usable marijuana that is being assigned to the producer.

(3) A registered processing site may accept the transfer of usable marijuana from a producer licensed by the Commission under ORS 475B.070 who is also registered by the Commission to produce marijuana for a patient. The Commission licensed producer must provide the registered dispensary with:

(a) Proof of licensure under ORS 475B.070; and

(b) A copy of the patient agreement as described in OAR 845-025-2510.

(4) Transfer of medical cannabinoid products, concentrates or extracts. A registered processing site may only accept a transfer of a medical cannabinoid product, concentrate or extract from another registered medical marijuana processing site.

(5) A registered processing site may only accept a transfer of a medical cannabinoid product, concentrate or extract from a registered processing site that provides a Processing Site Authorization to Transfer form, prescribed by the Authority. In addition the registered processing site must obtain a copy of the photo identification of the individual transferring the product, concentrate or extract as required in section (5)(b)(B) of this rule.

(6) Transfer Records. At the time marijuana, usable marijuana or a medical cannabinoid product, concentrate or extract is transferred to a registered processing site a processing site representative must:

(a) Document, on a form prescribed by the Authority, as applicable:

(A) The weight in metric units of all usable marijuana received by the processing site;

(B) The amount of a medical cannabinoid product, concentrate or extract received by the processing site, including, as applicable, the weight in metric units, or the number of units;

(C) The name of the usable marijuana or medical cannabinoid product, concentrate or extract;

(D) The date the usable marijuana or medical cannabinoid product, concentrate or extract was received;

(E) The harvest or process lot numbers; and

(F) The amount paid by the registered processing site.

(b) Obtain and maintain a copy of, as applicable:

(A) Documents required in sections (1) through (3) of this rule including the date it was received;

(B) The photo identification of the individual transferring the usable marijuana or medical cannabinoid product, concentrate or extract to the registered processing site, if such a copy is not already on file;

(C) The OMMP card of the individual transferring usable marijuana;

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(D) The medical marijuana processing site registration; and
(E) Test results for marijuana items transferred to the processing site unless the processing site plans to arrange for the testing of the marijuana item.

(7) Nothing in these rules requires a registered processing site to accept a transfer of a marijuana item.

(8) All documentation required in this rule must be maintained electronically in an integrated inventory tracking and point of sale system.

Stat. Auth.: ORS 475B.435, 475B.440

Stats. Implemented: ORS 475B.435, 475B.440, 475B.443

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 33-2016, f. & cert. ef. 11-28-16; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-008-1810

Cannabinoid Topical, Tincture, Capsule, Suppository or Transdermal Patch Processor

(1) A processing site endorsed to make cannabinoid topicals, tinctures, capsules, suppositories or transdermal patches may not engage in processing in a location that is operating as a restaurant, seasonal temporary restaurant, intermittent temporary restaurant, limited service restaurant or single-event temporary restaurant licensed under ORS chapter 624.

(2) A registered processing site making cannabinoid capsules and tinctures may only process in a food establishment licensed by the Oregon Department of Agriculture (ODA) and must comply with the applicable provisions of OAR chapter 603, division 21, division 24, division 25, with the exception of OAR 603-025-0020(17), and division 28.

Stat. Auth.: ORS 475B.435 & 475B.440

Stats. Implemented: ORS 475B.435 & 475B.440

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-008-1830

Medical Marijuana Dispensaries: Registered Marijuana Processing Site Required Reporting to the Authority

(1) The individual or individuals responsible for a marijuana processing site shall maintain documentation of each transfer of usable marijuana, medical cannabinoid products, cannabinoid concentrates and cannabinoid extracts and must submit to the Authority electronically, by the 10th of each month, the following information:

(a) The amount of usable marijuana transferred to the marijuana processing site during the previous month.

(b) The amount and type of a medical cannabinoid concentrate or extract transferred by another registered processing site during the previous month. For purposes of this section "type" means:

(A) Cannabinoid concentrate in solid form; and

(B) Cannabinoid concentrate in liquid form.

(c) The amount and type of medical cannabinoid products transferred by the marijuana processing site to a dispensary. For purposes of this section "type" means:

(A) Cannabinoid edibles;

(B) Cannabinoid topicals;

(C) Cannabinoid tinctures;

(D) Cannabinoid capsules;

(E) Cannabinoid suppositories;

(F) Cannabinoid transdermal patches; and

(G) Cannabinoid product other than products listed in paragraphs (A) to (F) of this subsection.

(d) The amount and type of cannabinoid concentrates transferred by the marijuana processing site during the previous month. For purposes of this section "type" means:

(A) Cannabinoid concentrate in solid form; and

(B) Cannabinoid concentrate in liquid form.

(e) The amount and type of cannabinoid extracts transferred by the marijuana processing site during the previous month. For purposes of this section "type" means:

(A) Cannabinoid extract in solid form; and

(B) Cannabinoid extract in liquid form.

(f) The amount and type of medical cannabinoid products transferred by the marijuana processing site to a patient or the patient's designated primary caregiver during the previous month. For purposes of this section "type" means:

(A) Cannabinoid edibles;

(B) Cannabinoid topicals;

(C) Cannabinoid tinctures;

(D) Cannabinoid capsules;

(E) Cannabinoid suppositories;

(F) Cannabinoid transdermal patches; and

(G) Cannabinoid product other than products listed in paragraphs (A) to (F) of this subsection.

(g) The amount and type of cannabinoid concentrates or extracts transferred by the marijuana processing site to a patient or the patient's designated primary caregiver during the previous month. For purposes of this section "type" means:

(A) Cannabinoid concentrate or extract in liquid form; and

(B) Cannabinoid concentrate or extract in solid form.

(2) Information submitted to the Authority under this rule must:

(a) List each type of marijuana item separately;

(b) Provide the total aggregate amount of a type of marijuana item transferred to a processing site by a patient, designated primary caregiver, PRMG, other registered processing site, or Commission licensed producer during the previous month; and

(c) Provide the total aggregate amount of a type of marijuana item transferred from a processing site to a registered dispensary, patient, designated primary caregiver, or other registered processing site during the previous month.

(3) In addition to submitting the information as required by section (1) of this rule, a person responsible for a processing site must keep a record of the information described in section (1) of this rule for two years after the date on which the person submits the information to the Authority.

Stat. Auth.: ORS 475B.438

Stats. Implemented: ORS 475B.438

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-008-2180

Violations

(1) It is a violation for an applicant for a registration, registrant or registrant representative to:

(a) Fail to cooperate with an inspection;

(b) Submit false or misleading information to the Authority;

(c) If the registrant is a dispensary, transfer a marijuana item to an individual who is not a patient or a designated primary caregiver;

(d) If the registrant is a processing site, transfer a medical cannabinoid product, concentrate or extract to anyone who is not a registered processing site representative, a registered dispensary representative, a patient or a designated primary caregiver, as permitted under these rules;

(e) Accept the transfer of a marijuana item from an individual who is not registered with the Authority;

(f) Accept the transfer of a marijuana item that was produced or processed in another state;

(g) Possess a mature marijuana plant;

(h) Fail to submit a plan of correction in accordance with OAR 333-008-2190;

(i) Fail to comply with an emergency suspension order or final order of the Authority, including failing to pay a civil penalty;

(j) Fail to comply with ORS 475B.435 to 475B.443, 475B.450 to 475B.453, 475B.555, 475B.605, 475B.615, these rules, or OAR chapter 333, division 7;

(k) Alter or falsify a laboratory test report or result;

(l) Alter or falsify a receipt issued under OAR 333-008-0023 or 333-008-0040;

(m) Submit false or misleading information to the Commission for the purpose of pre-approval of packaging and labeling as required by OAR 333-007-0100; and

(n) Submit false or misleading information to a laboratory for the purpose of compliance testing under OAR 333-007-0300 to 333-007-0500.

(2) It is a violation of ORS 475B.450 and these rules to operate a dispensary without being registered by the Authority.

(3) It is a violation of ORS 475B.435 and these rules to operate a processing site without being registered by the Authority unless an exemption applies.

Stat. Auth.: ORS 475B.435, 475B.450 & 475B.525

Stats. Implemented: ORS 475B.435 & 475B.450

Hist.: PH 9-2016, f. 2-26-16, cert. ef. 3-1-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-008-2210

Penalty Matrix

(1) The Authority has established Category I, II, III and IV violations with Category I violations posing the highest risk to public health and safety, and category IV violations being generally technical in nature.

(2) The Authority may allege multiple violations in a single notice or may count violations alleged in notices issued within the previous two year period toward the total number of violations. In calculating the total num-

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ber of violations, the Authority may consider a proposed violation for which the Authority has not yet issued a final order.

(3) If the Authority finds one or more mitigating or aggravating circumstances, it may assess a lesser or greater sanction, up to and including revocation. The Authority may decrease or increase a sanction to prevent inequity or to take account of particular circumstances in the case.

(4) The Authority may consider the following mitigating circumstances when determining what sanction to impose:

- (a) Making a good faith effort to prevent a violation.
- (b) Extraordinary cooperation in the violation investigation demonstrating the licensee or permittee accepts responsibility.

(5) The Authority may consider the following aggravating circumstances when determining what sanction to impose:

- (a) Receiving a prior warning about one or more compliance problems.
- (b) Repeated failure to comply with laws.
- (c) Efforts by person or registrant to conceal a violation.
- (d) Intentionally committing a violation.
- (e) A violation involving more than one consumer or employee.
- (f) A violation involving a transfer of a marijuana item to anyone other than a patient, designated primary caregiver, grower or registrant.
- (g) A violation resulting in injury or death.
- (h) Three or more violations within a two-year-period, regardless of the category, where the number of the proposed or final violations indicate a disregard for the law or failure to control the premises.

(6) A registrant may not avoid the sanction for a violation or the application of the provision for successive violations by changing the corporate structure for example, by adding or dropping a partner or converting to another form of legal entity when the individuals who own, operate, or control the business are substantially similar.

Stat. Auth.: ORS 475B.025
Stats. Implemented: ORS 475B.210, 475B.295, 475B.560 & 475B.635
Hist.: PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-064-0100

Marijuana Item Sampling Procedures and Testing

(1) For purposes of this rule the definitions in OAR 333-007-0310 apply unless the context indicates otherwise.

(2) Sampling.

(a) A laboratory must prepare marijuana item sampling policies and procedures that contain all of the information necessary for collecting and transporting samples from a marijuana item in a manner that does not endanger the integrity of the sample for any analysis required by this rule. These policies and procedures must be appropriate to the matrix being sampled.

(b) Sampling policies and procedures must be accredited by ORELAP prior to any marijuana samples being taken. The policies and procedures must be consistent with the following ORELAP sampling protocols approved by the accrediting body, incorporated by reference:

(A) Usable Marijuana: ORELAP-SOP-001 Rev 3.0; and

(B) Concentrates, Extracts, and Products: ORELAP-SOP-002 Rev 3.1.[Sampling protocols may be found on the ORELAP and Cannabis Testing webpage, public.health.oregon.gov/LaboratoryServices/EnvironmentalLaboratoryAccreditation/Pages/cannabis-info.aspx]

(c) Laboratory personnel that perform sampling must:

(A) Comply with the education and training requirements in the sampling protocols referenced in subsection (2)(b) of this rule;

(B) Follow the laboratory's accredited sampling policies and procedures;

(C) Follow chain of custody procedures consistent with TNI EL Standard V1M2 5.7 and 5.8;

(D) After taking samples document the samples in accordance with subsection (2)(e) of this rule and if sampling for a licensee record the sampling and transfer information in the Commission's seed to sale system, as required by the Commission; and

(E) Take care while sampling to avoid contamination of the non-sampled material. Sample containers must be free of analytes of interest and appropriate for the analyses requested.

(d) A sufficient sample size must be taken for analysis of all requested tests and the quality control performed by the testing laboratory for these tests.

(e) A laboratory must comply with any recording requirements for samples and sample increments in the accredited policies and procedures and at a minimum:

(A) Record the location of each sample and sample increment taken.

(B) Assign a field identification number for each sample, sample increment and field duplicate that have an unequivocal link to the laboratory analysis identification.

(C) Assign a unique identification number for the test batch in accordance with OAR 333-007-0370 and TNI EL standard requirements.

(D) Have a documented system for uniquely identifying the samples to be tested to ensure there can be no confusion regarding the identity of such samples at any time. This system must include identification for all samples, sample increments, preservations, sample containers, tests, and subsequent extracts or digestates.

(E) Place the laboratory identification code as a durable mark on each sample container.

(F) Enter a unique identification number into the laboratory records. This number must be the link that associates the sample with related laboratory activities such as sample preparation. In cases where the sample collector and analyst are the same individual, or the laboratory pre-assigns numbers to sample containers, the unique identification number may be the same as the field identification code.

(f) Combining sample increments.

(A) Sample increments collected from the same batch of usable marijuana must be combined into a single sample by a laboratory prior to testing. Sample increments from a batch of a cannabinoid concentrate, extract or product may be combined into a single sample by a laboratory prior to testing if the cannabinoid concentrate, extract or product has a certified control study.

(B) Sample increments and samples collected from different batches may not be combined, except as permitted by OAR 333-007-0360.

(C) Field duplicates may not be combined with the primary samples.

(3) THC and CBD testing validity. When testing a sample for THC and CBD a laboratory must comply with additional method validation as follows:

(a) Run a laboratory control standard in accordance with TNI standards requirements within acceptance criteria of 70 percent to 130 percent recovery.

(b) Analyze field duplicates of samples within precision control limits of plus or minus 20 percent RPD, if field duplicates are required.

(4) Calculating total THC and total CBD.

(a) Total THC must be calculated as follows, where M is the mass or mass fraction of delta-9 THC or delta-9 THCA:

$$M \text{ total delta-9 THC} = M \text{ delta-9 THC} + 0.877 \times M \text{ delta-9 THCA.}$$

(b) Total CBD must be calculated as follows, where M is the mass or mass fraction of CBD and CBDA:

$$M \text{ total CBD} = M \text{ CBD} + 0.877 \times M \text{ CBDA.}$$

(c) Each test report must include the total THC and total CBD.

(5) Report total THC and total CBD as Dry Weight. A laboratory must report total THC and Total CBD content by dry weight calculated as follows:

$$P \text{ total THC(dry)} = P \text{ total THC(wet)} / [1 - (P \text{ moisture}/100)]$$

$$P \text{ total CBD(dry)} = P \text{ total CBD(wet)} / [1 - (P \text{ moisture}/100)]$$

(6) Calculating RPD and RSD.

(a) A laboratory must use the following calculation for determining RPD:

$$\text{Relative Percent Difference} \\ \%RPD = \frac{(\text{sample} - \text{duplicate})}{(\text{sample} + \text{duplicate})} \times 100$$

(b) A laboratory must use the following calculation for determining RSD:

$$\text{Standard Deviation} \\ S = \sqrt{\frac{\sum (xi - \bar{x})^2}{n-1}} \\ \text{Relative Standard Deviation} \\ \%RSD = S \times 100$$

(c) For purposes of this section:

(A) S = standard deviation.

(B) n = total number of values.

(C) xi = each individual value used to calculate mean.

(D) x = mean of n values.

(d) For calculating both RPD and RSD if any results are less than the LOQ the absolute value of the LOQ is used in the equation.

(7) Tentative Identification of Compounds (TIC).

(a) If a laboratory is using a gas chromatography mass spectrometry instrument for analysis when testing cannabinoid concentrates or extracts for solvents and determines that a sample may contain compounds that are not included in the list of analytes the laboratory is testing for the laboratory must attempt to achieve tentative identification.

(b) Tentative identification is achieved by searching NIST 2014 or an equivalent database (>250,000 compounds).

(c) A laboratory shall report to the licensee or registrant and the Authority or the Commission, depending on which agency has jurisdiction,

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up to five tentatively identified compounds (TICS) that have the greatest apparent concentration.

(d) Match scores for background subtracted or deconvoluted spectra should exceed 90 percent compared to library spectrum.

(A) The top five matches over 90 percent must be reported by the lab

(B) TIC quantitation is estimated by comparing analyte area to the closest internal standard area and assuming a response factor (RF) = 1.

(8) A laboratory must provide:

(a) Any pesticide test result to the Department of Agriculture upon that agency's request.

(b) A sample or a portion of a sample to the Department of Agriculture upon that agency's request, document the chain of custody from the laboratory to the Department, and document that the sample or portion of the sample was provided to the Department in the Commission's seed to sale tracking system.

(9) A laboratory performing tests for a licensee must enter any information required by the Commission in the Commission's seed to sale tracking system.

(10) A laboratory performing tests for a registrant must comply with the documentation requirements in OAR 333-007-0370 and must maintain the documentation required in these rules for at least three years and provide that information to the Authority upon request.

(11) The Authority may, in its discretion, deviate from TNI Standards in order to comply with OAR 333-007-0400 to 333-007-0500 and these rules based on the state's needs.

(12) On and after January 1, 2018, a laboratory must be able to demonstrate that its LOQ is below any action level established in OAR 333-007-0400 and 333-007-0410, Exhibit A, Tables 3 and 4.

(13) Non-compliance testing. A laboratory that conducts a quality control or research and development test for a registrant or licensee may use methods not approved by the Authority but the laboratory may not identify those test results as accredited results.

Stat. Auth.: ORS 438.605, 438.610, 438.615 & 438.620, 475B.555.
Stats. Implemented: ORS 438.605, 438.610, 438.615 & 438.620, 475B.555
Hist.: PH 22-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 35-2016(Temp), f. & cert. ef. 12-2-16 thru 5-30-17; PH 38-2016(Temp), f. 12-13-16, cert. ef. 12-15-16 thru 5-30-17; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

333-064-0110

Reporting Marijuana Test Results

(1) For purposes of this rule the definitions in OAR 333-007-0310 apply unless the context indicates otherwise.

(2) A test report must clearly identify for the licensee or registrant:

(a) Whether a sample has exceeded an action limit for an analyte in Exhibit A, Tables 3 or 4, or has otherwise failed a test as described in OAR 333-007-0300 to 333-007-0500.

(b) A "detected" pesticide result as required in section (6) of this rule.

(c) The batch unique identification number required under OAR 333-007-0350 and the test batch number associated with the samples tested, as required by OAR 333-064-0100.

(d) On and after July 1, 2017, identification of the test as a compliance test or a quality control or research and development test.

(3) Within 24 hours of completion of the laboratory's data review and approval procedures a laboratory must report all failed tests for testing required under OAR 333-007-0300 to 333-007-0500 except for failed water activity, whether or not the lab is reanalyzing the sample under OAR 333-007-0450:

(a) Into the Commission's seed to sale tracking system if performing testing for a licensee; and

(b) To the Authority electronically at www.healthoregon.org/ommp if performing testing for a registrant, along with a copy of the test order information required in OAR 333-007-0315.

(4) The laboratory must report all test results required under OAR 333-007-0300 to 333-007-0500 that have not been reported under section (3) of this rule into the Commission's seed to sale tracking system if performing testing for a licensee.

(5) A laboratory must determine and include on each test report its limit of quantification (LOQ) and action level for each analyte listed in OAR 333-007-0400 Table 3 and 333-007-0410 Table 4.

(6) When reporting pesticide testing results the laboratory must include in the report any target compound that falls below the LOQ that has a signal to noise ratio of greater than 5:1 and meets identification criteria with a result of "detected." This additional reporting is not required if the laboratory's LOQ is less than or equal to one half of the action level in Table 3.

(7) A laboratory must include in a test report the results of all associated batch quality control samples, with the date of analysis of the quality control samples and the acceptance limits used to determine acceptability.

(a) Batch quality control samples are the method blank and laboratory control sample.

(b) The report must clearly show the association to the client samples in the report by listing the batch identification numbers.

(8) A laboratory that is reporting failed test results to the Commission or the Authority in accordance with section (3) of this rule must report the failed test at the same time or before reporting to the licensee or registrant.

(9) If requested by the Authority, a laboratory must report sampling and testing information to the Authority, in a manner prescribed by the Authority.

(10) Test results expire after one year.

Stat. Auth.: ORS 475B.555
Stats. Implemented: ORS 475B.555
Hist.: PH 22-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; PH 21-2016, f. 6-24-16, cert. ef. 6-28-16; PH 35-2016(Temp), f. & cert. ef. 12-2-16 thru 5-30-17; PH 38-2016(Temp), f. 12-13-16, cert. ef. 12-15-16 thru 5-30-17; PH 9-2017, f. 5-26-17, cert. ef. 5-31-17

Oregon Patient Safety Commission Chapter 325

Rule Caption: Establishes the Oregon Patient Safety Commission 2017-2019 biennial budget by amending OAR 325-005-0015.

Adm. Order No.: PSC 2-2017

Filed with Sec. of State: 5-19-2017

Certified to be Effective: 6-30-17

Notice Publication Date: 5-1-2017

Rules Amended: 325-005-0015

Subject: In accordance with the rules governing semi-independent state agencies, this action establishes the Oregon Patient Safety Commission 2017-2019 biennial budget of \$4,353,196 by amending OAR 325-005-015.

Rules Coordinator: Melissa Parkerton—(503) 224-5034

325-005-0015

Biennial Budget

The Commission hereby adopts by reference the Oregon Patient Safety Commission 2017-2019 biennial budget of \$4,353,196 covering the period July 1, 2017, through June 30, 2018. The Commission's Executive Director will amend budgeted accounts as necessary, within the approved budget of \$4,353,196 for the effective operation of the Commission. The Commission will not exceed the approved 2017-2019 biennial budget without amending this rule, notifying interested parties, and holding a public hearing as required by ORS Chapter 182.462. Copies of the budget are available from the Commission's office and are posted on the Commission's website.

Stat. Auth.: ORS 442.820, 442.831
Stats. Implemented: ORS 182.462, 442.831
Hist.: PSC 1-2006, f. & cert. ef. 2-6-06; PSC 4-2007, f. & cert. ef. 7-2-07; PSC 1-2009, f. & cert. ef. 6-26-09; PSC 1-2011, f. & cert. ef. 7-1-11; PSC 1-2012, f. 3-27-12, cert. ef. 4-1-12; PSC 1-2013, f. & cert. ef. 4-25-13; PSC 2-2013, f. & cert. ef. 7-3-13; PSC 1-2014, f. 3-18-14, cert. ef. 3-21-14; PSC 1-2015, f. & cert. ef. 3-17-15; PSC 2-2015, f. & cert. ef. 7-10-15; PSC 1-2016, f. & cert. ef. 1-29-16; PSC 1-2017, f. 2-28-17, cert. ef. 3-1-17; PSC 2-2017, f. 5-19-17, cert. ef. 6-30-17

Oregon Public Employees Retirement System Chapter 459

Rule Caption: Establishes authority to satisfy insolvent employer's liability to the fund through the contingency reserve account.

Adm. Order No.: PERS 2-2017

Filed with Sec. of State: 5-26-2017

Certified to be Effective: 5-26-17

Notice Publication Date: 4-1-2017

Rules Adopted: 459-009-0400

Subject: ORS 238.670(1)(a) authorizes the PERS Board to use funds in the Contingency Reserve established under ORS 238.670(1) to "prevent any deficit in the fund by reason of the insolvency of a participating public employer." Note that the funding for this purpose can only come from earnings from employers deposited in the Contingency Reserve; \$25 million has currently been set aside in the reserve for this purpose.

The Board has not previously used the Contingency Reserve to address the liabilities of insolvent employers, principally because

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there has never been a framework to determine that an employer is insolvent. There are a number of PERS employers that have ceased to exist as ongoing entities; many of them have remaining PERS liabilities, whether outstanding invoices or unfunded actuarial liabilities.

The new administrative rule provides a definition of insolvent employer to assist in assessing when the Contingency Reserve can be used for this purpose. A simple balance sheet analysis is not sufficient to determine solvency; PERS should also determine whether the liabilities of the entity have been assigned to or assumed by another entity. Once PERS determines, after making all reasonable efforts to collect as required by OAR 459-005-0620, that there is no resource from which to collect, then PERS will consider whether the employer is insolvent.

Rules Coordinator: Daniel Rivas—(503) 603-7713

459-009-0400

Insolvent Employer

(1) For the purposes of this rule, an “insolvent employer” is an employer that meets all of the following requirements:

(a) The employer has dissolved either by statute or administrative action as an ongoing entity;

(b) There are no assets from which PERS can collect to cover the dissolved employer’s PERS liability or there are inadequate assets to cover all PERS liability; and

(c) There is no entity either by operation of law or contractual agreement that is responsible for the dissolved employer’s remaining liability, or PERS is unable to assign the remaining liability to an entity.

(2) If PERS determines an employer is insolvent, the board may take action to satisfy some or all of the outstanding liability of an insolvent employer to the fund through the Contingency Reserve established under ORS 238.670(1).

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

Stats. Implemented: ORS 238.670

Hist.: PERS 2-2017, f. & cert. ef. 5-26-17

Rule Caption: Clarify administration of forfeiture and restoration of service rights.

Adm. Order No.: PERS 3-2017

Filed with Sec. of State: 5-26-2017

Certified to be Effective: 5-26-17

Notice Publication Date: 4-1-2017

Rules Amended: 459-011-0050

Subject: Clarify administration of membership termination and restoration of forfeited credit by reason of withdrawal, including how membership forfeiture impacts other PERS statutes. Specify that the five-year clock for separation from service begins from the date of last separation from employment in a “qualifying position” and clarify what types of membership forfeiture may be restored under ORS 238.105 and 238.115.

Rules Coordinator: Daniel Rivas—(503) 603-7713

459-011-0050

Forfeiture and Restoration of Service Rights

(1) A member who, pursuant to ORS 238.265, withdraws the amount credited to the member’s account ceases to be a PERS Chapter 238 Program member and forfeits all membership rights accrued under ORS Chapter 238 before the effective date of withdrawal, including any service rights attributable to employment before the effective date of withdrawal.

(2) Any such person may elect to restore credit forfeited by the withdrawal of the member account as provided in ORS 238.105 or 238.115.

(3) Pursuant to ORS 238.105, any such person who reenters the service of a participating employer in a qualifying position within five years from the date of the last separation from employment in a qualifying position that preceded the member’s withdrawal may, at any time during the one-year period immediately following the date of reemployment, repay to PERS, in a single lump sum payment, an amount equal to the amount withdrawn plus the earnings the amount withdrawn would have accumulated from the effective date of withdrawal to the date of repayment.

(a) Upon repayment as described in section (3) of this rule, the PERS Chapter 238 Program membership and service rights forfeited by the withdrawal will be restored. The former member will reestablish membership in the PERS Chapter 238 Program on the first day of the month following the

date of the repayment. Service by the former member from the date of reemployment to the date membership is reestablished shall be attributed to the PERS Chapter 238 Program. The withdrawn member account will be reestablished in the amount of the repayment.

(b) An employee who is terminated from employment, withdraws the member account under ORS 238.265, and is reinstated to employment in connection with a retroactive payment may restore membership and service rights within the time period described in section (3) of this rule or within one year from the date the employee actually returns to employment, whichever is later. A retroactive payment must be allocated pursuant to ORS 238.008. So allocated, the payment must be used in the determination of employee and employer contributions and in the calculation of benefits.

(4) Pursuant to ORS 238.115, a person described in section (1) of this rule who reenters the service of a participating employer in a qualifying position and serves as an active member for 10 years after such reentry may obtain restoration of creditable service forfeited by the withdrawal if the member repays to PERS, in a single lump sum payment, an amount equal to the amount withdrawn plus 7.5% interest on the amount withdrawn compounded annually for each year or portion of a year after the effective date of withdrawal and before the effective date of retirement, for the period of creditable service restored.

(5) Restoration of credit forfeited by withdrawal of the member account under section (4) of this rule is not available to persons who already restored membership and service rights under section (3) of this rule.

(6) Beginning with January 1, 2018 effective retirement dates, a person whose membership is terminated under ORS 238.095(2) may not restore forfeited credit under ORS 238.115.

(7) Notwithstanding the provisions of this rule, a member who withdraws pursuant to ORS 238.265 and receives an additional amount pursuant to section 2, chapter 276, Oregon Laws 2003, may not reestablish membership under section (3) of this rule.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.008, 238.095, 238.105, 238.115, 238.125, 238.265, 2003 OL Ch. 276

Hist.: PER 8, f. 12-15-55; PERS 1-1996, f. & cert. ef. 3-26-96, Renumbered from 459-010-0060; PERS 2-2007, f. & cert. ef. 1-23-07; PERS 17-2007, f. & cert. ef. 11-23-07; PERS 2-2010, f. & cert. ef. 5-28-10; PERS 3-2017, f. & cert. ef. 5-26-17

Oregon State Treasury Chapter 170

Rule Caption: Modifies rules regarding criminal records checks to conduct checks in accordance with state-wide rules

Adm. Order No.: OST 4-2017

Filed with Sec. of State: 5-25-2017

Certified to be Effective: 5-25-17

Notice Publication Date: 5-1-2017

Rules Amended: 170-002-0010

Subject: The Department of Administrative Services established State-Wide Criminal Records Rules effective January 4, 2016. Oregon State Treasury is amending rules regarding criminal records checks to comply with the state-wide requirements. This change eliminates most of the existing rule text and states that Criminal Records checks are conducted in accordance with OAR 125-007-0200 through OAR 125-007-0310.

Rules Coordinator: Kimberly Olson—(503) 378-3562

170-002-0010

Criminal Records Check and Fitness Determination Rules

(1) Purpose. This rule controls the OST’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 OST as an employee, volunteer, board member, contractor or vendor. The fact that the OST approves a subject individual as fit does not guarantee the individual a position as an OST employee, volunteer, board member, contractor or vendor. Criminal Records checks are conducted in accordance with OAR 125-007-0200 through 125-007-0310.

(2) Fees.

(a) The OST 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 to the Department by the Oregon Department of State Police, the Federal Bureau of Investigation, or a contractor conducting a criminal background check to obtain criminal offender information on the subject individual.

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(b) The OST may not charge the fee to the subject individual on whom criminal offender information is sought if the subject individual is being considered for employment with OST or providing volunteer services to OST.

(c) The OST may charge a fee to the subject individual if he or she is a contractor or vendor and is undergoing a fitness determination in that capacity, or the OST may charge the fee to the subject individual's employer.

(d) The OST may charge a fee to a subject individual that has been appointed or is being considered for appointment to a board or commission by the State Treasurer.

Stat. Auth.: ORS 181A.195, 184.340 & 184.365
Stats. Implemented: ORS 181A.195(9)
Hist.: OST 1-2008, f. & cert. ef. 3-3-08; OST 4-2017, f. & cert. ef. 5-25-17

Physical Therapist Licensing Board Chapter 848

Rule Caption: Amend 2015-2017 biennial budget.

Adm. Order No.: PTLB 2-2017(Temp)

Filed with Sec. of State: 6-14-2017

Certified to be Effective: 6-14-17 thru 6-30-17

Notice Publication Date:

Rules Amended: 848-005-0010

Subject: The Physical Therapist Licensing Board hereby adopts by reference the Physical Therapist Licensing Board 2015-2017 Biennium Budget of \$1,076,000 covering the period from July 1, 2015 through June 30, 2017. The Executive Director of the Board will amend budgeted accounts as necessary within the approved budget of \$1,076,000 for the effective operation of the Board. The Board will not exceed the approved 2015-2017 Biennium Budget expenditures without amending this rule, notifying holders of licenses, and holding a public hearing thereon as required, by ORS Chapter 182.462(1) and (2). Copies of the budget are available from the Board's office and posted on the Board's website.

Rules Coordinator: James Heider—(971) 673-0203

848-005-0010

Board Budget

The Physical Therapist Licensing Board hereby adopts by reference the Physical Therapist Licensing Board 2015-2017 Biennium Budget of \$1,076,000 covering the period from July 1, 2015 through June 30, 2017. The Executive Director of the Board will amend budgeted accounts as necessary within the approved budget of \$1,076,000 for the effective operation of the Board. The Board will not exceed the approved 2015-2017 Biennium Budget expenditures without amending this rule, notifying holders of licenses, and holding a public hearing thereon as required, by ORS Chapter 182.462(1) and (2). Copies of the budget are available from the Board's office and posted on the Board's website.

Stat. Auth.: ORS 688.210
Stats. Implemented: ORS 688.160(5)(c)
Hist.: PTLB 3-1999(Temp), f. & cert. ef. 9-7-99 thru 3-1-00; PTLB 5-1999, f. 11-23-99, cert. ef. 12-1-99; PTLB 5-2001(Temp) f. & cert. ef. 6-18-01 thru 9-30-01; PTLB 6-2001, f. & cert. ef. 10-1-01; PTLB 2-2003, f. 6-30-03, cert. ef. 7-1-03; Renumbered from 848-010-0105, PTLB 2-2004, f. & cert. ef. 12-29-04; PTLB 1-2005, f. & cert. ef. 4-8-05; PTLB 2-2007, f. 5-25-07, cert. ef. 6-1-07; PTLB 1-2009, f. & cert. ef. 5-14-09; PTLB 2-2009 f. 5-14-09 cert. ef. 7-1-09; PTLB 1-2011, f. 6-20-11, cert. ef. 7-1-11; PTLB 1-2013, f. 6-3-13, cert. ef. 7-1-13; PTLB 1-2015, f. 3-31-15, cert. ef. 7-1-15; PTLB 1-2017, f. 3-9-17, cert. ef. 7-1-17; PTLB 2-2017(Temp), f. & cert. ef. 6-14-17 thru 6-30-17

Public Utility Commission Chapter 860

Rule Caption: In the Matter of Rulemaking Regarding Severe Weather Moratorium on Service Disconnection.

Adm. Order No.: PUC 4-2017

Filed with Sec. of State: 5-30-2017

Certified to be Effective: 5-30-17

Notice Publication Date: 3-1-2017

Rules Adopted: 860-021-0407

Subject: This rule implements a mandatory severe weather moratorium on residential service disconnection for nonpayment.

Rules Coordinator: Diane Davis—(503) 378-4372

860-021-0407

Severe Weather Moratorium on Involuntary Disconnection of Residential Electric or Gas Utility Service

(1) Except as set forth in section (8) of this rule, an energy utility must put into effect a moratorium on the disconnection of residential service for nonpayment on any day a high temperature of less than 32 degrees Fahrenheit is forecast by the applicable weather reporting service.

(2) An electric utility must put into effect a moratorium on the disconnection of residential service for nonpayment on any day a local Heat Advisory is issued by the applicable weather reporting service.

(3) Any moratorium activated as a result of section (1) or section (2) of this rule must remain in effect at least through the start of the next business day.

(4) An energy utility must base the need for a moratorium on data available from the National Weather Service or another weather reporting service that may be designated by the utility.

(5) An energy utility need only apply a moratorium to the geographic area that meets the conditions in section (1) and section (2) of this rule.

(6) The energy utility must obtain the required forecast data no later than 8:00 a.m. each business day.

(7) Each energy utility must notify the Commission's Consumer Services Section which weather reporting service it will utilize in each geographic area served by the utility in complying with the requirements of this rule; and the energy utility must notify the Commission's Consumer Services Section upon choosing a different weather reporting service.

(8) The temperature threshold specified in section (1) of this rule does not apply if an energy utility offers a Commission-approved winter protection program.

Stat. Auth.: ORS 756.060
Stats. Implemented: ORS 756.040
Hist.: PUC 4-2017, f. & cert. ef. 5-30-17

Rule Caption: In the Matter of Revisions to Division 033 Rules.

Adm. Order No.: PUC 5-2017

Filed with Sec. of State: 5-31-2017

Certified to be Effective: 5-31-17

Notice Publication Date: 3-1-2017

Rules Amended: 860-033-0005, 860-033-0030, 860-033-0046, 860-033-0050, 860-033-0110, 860-033-0530

Subject: The rule changes modify OPUC's Division 033 rules to (a) conform to the changes to the federal requirements related to the provision of telecommunications subsidies to low-income customers and (b) clarify eligibility for the Telecommunication Device Access Program.

Rules Coordinator: Diane Davis—(503) 378-4372

860-033-0005

Definitions

For the purpose of this division:

(1) "Basic Service" means "basic telephone service" as defined in OAR 860-032-0190. For qualifying low-income recipients, basic service also includes access to toll-limitation services.

(2) "Benefit year" means the 12 months following a customer's Lifeline service initiation date with the Eligible Telecommunications Provider.

(3) "Competitive Provider" means a competitive telecommunications provider as defined in ORS 759.005(1) that provides services authorized under ORS 759.020.

(4) "Cooperative" means a cooperative corporation or association that provides local exchange telecommunications service within its own exchanges, is organized under ORS Chapter 62, and is certified under ORS 759.025(2).

(5) "Duplicate Support" means a customer is receiving OTAP or Lifeline supported services on two or more single lines or single line equivalents concurrently, or two or more customers in a household are receiving OTAP or Lifeline supported services concurrently.

(6) "Economic unit" means all adult individuals, eighteen or older, contributing to and sharing in the income and expenses of a household, including adult individuals with minimal or no income who benefit from another individual's financial support. Children under the age of eighteen living with their parents or guardians are considered to be part of the same household as their parents or guardians.

(7) "Eligible Telecommunications Carrier" means a provider of telecommunications service, including a cellular, wireless, or other radio

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common carrier, that is certified by order of the Commission as eligible to receive federal universal service support throughout a designated service area by having met the eligibility criteria set forth in 47 C.F.R. § 54 Subpart C (2012) and in orders of the Commission.

(8) “Eligible Telecommunications Provider” means a provider of telecommunications service, including a cellular, wireless, or other radio common carrier, that is certified by order of the Commission as eligible to provide OTAP to its qualifying customers throughout a designated service area by having met the following eligibility criteria:

(a) Offers services under 47 C.F.R. § 54 Subpart E (2013) using either its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another Eligible Telecommunications Carrier throughout the service area). Under 47 C.F.R. § 54 Subpart C (2012), the requirement of using its “own facilities” includes, but is not limited to, purchasing unbundled network elements from another carrier;

(b) Advertises the availability of and the charges for such services using media of general distribution; and

(c) Demonstrates that it will comply with OAR 860-033-0005 through 860-033-0110.

(9) “Household” means any individual or group of individuals, related or unrelated, who are living together at the same address as one economic unit.

(10) “Income” means gross income as defined under section 61 of the Internal Revenue Code, 26 USC § 61, for all members of the household from any source derived, unless specifically excluded by the Internal Revenue Code, Part III of Title 26, 26 USC § 101, et. seq.

(11) “Lifeline” means a program established by the Federal Communications Commission as defined in 47 C.F.R. § 54 Subpart E (2016).

(12) “Lifeline Household Worksheet” means a form that the Commission sends to an applicant when the Commission is unable to determine if an applicant and a current OTAP or Lifeline customer are part of a separate economic unit or household.

(13) “Local Exchange Service” means a “local exchange telecommunications service” as defined in ORS 759.005(3).

(14) “Low-income customer” means an individual who demonstrates eligibility for Lifeline supported services or the Oregon Telephone Assistance Program in OAR 860-033-0030.

(15) “Marketing materials” means all media, including but not limited to print, audio, video, Internet (including email, web, and social networking media), and outdoor signage, that describe the OTAP or Lifeline supported service offering.

(16) “Oregon Telephone Assistance Program” or “OTAP” means a program established by the Commission that offers reduced local exchange rates to eligible low-income residential customers. OTAP establishes the requirements for Eligible Telecommunications Carriers to offer Lifeline supported services in Oregon and may provide benefits that are in addition to those offered in Lifeline.

(17) “Oregon Telecommunications Relay Service” or “OTRS” means a facility authorized by the Commission to provide telecommunications relay service.

(18) “Outstanding Accounts” means amounts owing to the Commission including current accounts receivable and accounts that the Commission has written off through appropriate legal procedures. The term does not include amounts owing to the Commission that have been lawfully discharged through bankruptcy proceedings or amounts that are the subject of a proceeding pending before the Commission.

(19) “Residential Service Protection Fund” or “RSPF” means a legislatively approved fund in the Oregon State Treasury that supports the Oregon Telephone Assistance Program, the Telecommunication Devices Access Program and the Oregon Telecommunications Relay Service.

(20) “RSPF Surcharge” means a specified amount up to 35 cents per month collected from each paying retail subscriber who has telecommunications service with access to the telecommunications relay service, except as provided in OAR 860-033-0006(2).

(21) “RSPF Surcharge Exception Form” means the reporting form identified by that title that is available on the Commission’s website at <http://www.puc.state.or.us/Pages/telecom/rspf/index.aspx>.

(22) “RSPF Surcharge Remittance Form 751” means the reporting form identified by that title that is available on the Commission’s website at <http://www.puc.state.or.us/Pages/telecom/rspf/index.aspx>.

(23) “Service Initiation Date” means the date the low-income customer began receiving the OTAP or Lifeline benefit.

(24) “Service Type” means the following type of Lifeline supported service to which the low-income customer may subscribe pursuant to the minimum service standards defined in 47 C.F.R. § 54 Subpart E (2016):

(a) Voice telephony service only;

(b) Voice telephony service with broadband internet access service — (broadband internet access service does not meet the minimum service standards);

(c) Broadband internet access service only;

(d) Broadband internet access service with voice telephony service — (voice telephony service does not meet the minimum service standards); or

(e) Bundle — both voice telephony and broadband internet access service meet the minimum service standards.

(25) “Telecommunication Devices Access Program” or “TDAP” means a program established by the Commission that provides Assistive Telecommunication Devices or Adaptive Equipment at no additional cost beyond telephone service for customers who are deaf, hard of hearing, speech-impaired, deaf-blind or have a disability.

(26) “Telecommunications provider” includes competitive providers, cooperatives and telecommunications utilities.

(27) “Telecommunications service” means the offering of telecommunications as defined in 47 C.F.R. 54.5 (2012) for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

(28) “Telecommunications utility” means a person who is not a competitive provider and is designated as a telecommunications utility under OAR 860-032-0010.

(29) “Toll Limitation Service” means a service provided by an Eligible Telecommunications Provider that allows an OTAP recipient to choose to block the completion of outgoing toll calls (toll blocking) or to specify a certain toll usage that may be incurred per month or per billing cycle (toll control).

(30) “Tribal Lifeline” means a Lifeline service for eligible residents of Tribal lands as defined in 47 C.F.R. § 54 Subpart E (2013).

(31) “Tribal Link Up” means a federal assistance program for eligible residents of Tribal lands as defined in 47 C.F.R. § 54 Subpart E (2013).

(32) “Universal Service Administrative Company” means an independent, not-for-profit corporation designated by the Federal Communications Commission as the administrator of the universal service fund.

Stat. Auth.: ORS 183, 756, 759 & 1987 OL Ch. 290

Stats. Implemented: ORS 756.040, 759.036 & 1987 OL Ch. 290

Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 7-1995(Temp), f. & cert. ef. 8-17-95 (Order No. 95-860); PUC 14-1995, f. & cert. ef. 12-20-95 (Order No. 95-1328); PUC 18-1997, f. & cert. ef. 12-17-97; PUC 18-2000, f. & cert. ef. 10-24-00; PUC 4-2001, f. & cert. ef. 1-24-01; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 12-2009, f. & cert. ef. 11-13-09; PUC 9-2011, f. & cert. ef. 10-4-11; PUC 5-2013(Temp), f. & cert. ef. 6-28-13 thru 12-24-13; PUC 7-2013, f. & cert. ef. 12-20-13; PUC 7-2016(Temp), f. 11-22-16, cert. ef. 12-2-16 thru 5-30-17; PUC 5-2017, f. & cert. ef. 5-31-17

860-033-0030

OTAP and Lifeline Eligibility

(1) A low-income customer demonstrates eligibility for OTAP and Lifeline by application to the Commission on a Commission-approved form demonstrating compliance with this rule.

(2) To be eligible, the customer, one or more of the customer’s dependents or the customer’s household must:

(a) Receive benefits from one of the following public assistance programs: Medicaid under Title XIX and XXI of the Social Security Act; Supplemental Nutrition Assistance Program; Supplemental Security Income; Federal Public Housing Assistance (Section 8); or Veterans and Survivors Pension Benefit; or

(b) Have income that is at or below 135 percent of the applicable Federal Poverty Guidelines for a household of that size.

(3) The Commission may require a low-income customer to submit documentation demonstrating that he or she qualifies under the program or income based eligibility requirements.

(a) Acceptable documentation of program eligibility includes the current or prior year’s statement of benefits from a public assistance program, a notice or letter of participation in a public assistance program, program participation documents, or another official document demonstrating that the customer, one or more of the customer’s dependents or the customer’s household receives benefits from a qualifying assistance program.

(b) Acceptable documentation of income eligibility includes the prior year’s state, federal, or Tribal tax return; current income statement from an employer or paycheck stub; a Social Security statement of benefits; a Veterans Administration statement of benefits; a retirement or pension statement of benefits; an Unemployment or Workers’ Compensation state-

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ment of benefit; federal or Tribal notice letter of participation in General Assistance; or a divorce decree, child support award, or other official document containing income information. If the customer presents documentation of income that does not cover a full year, such as current pay stubs, the customer must present the same type of documentation covering three consecutive months within the previous twelve months.

(4) The customer may be required to furnish his or her social security number and the social security number of the member of the customer's household upon whom eligibility is based before OTAP and Lifeline eligibility can be determined or verified. Failure to do so may result in denial of benefits.

(5) The customer must sign a written authorization on a Commission-approved form permitting the Commission to release necessary information to an Eligible Telecommunications Provider and, as necessary, to the following: Federal Communications Commission, Universal Service Administrative Company, Department of Human Services, and the applicant's personal representative or legal guardian.

(6) An applicant or customer may not use a post office box as his or her residential address. The Commission may accept a P.O. Box or General Delivery address as a billing address, but not a residential address.

(7) The OTAP or Lifeline benefit is limited to one single line, or single line equivalent, per economic unit at the customer's principal residence in Oregon.

(a) If the Commission is unable to determine that an applicant and a current OTAP or Lifeline customer are part of a separate household, the applicant must complete and submit to the Commission the Lifeline Household Worksheet.

(b) The Commission may verify annually that the customer continues to be part of a separate household.

(c) If the customer fails to respond within 30 days of the Commission's attempts to verify that the customer continues to be part of a separate household, the Commission will notify the Eligible Telecommunications Provider to de-enroll the customer from OTAP and the Lifeline program.

(8) The name of the OTAP or Lifeline applicant must appear on the billing statement or account for the telecommunications service in order for that applicant to qualify for OTAP or Lifeline benefits.

(9) The Commission may require an Eligible Telecommunications Provider to provide up to three months of OTAP or Lifeline benefits credited to the customer's account if the customer does not receive benefits after applying for benefits and demonstrating eligibility. The qualifying customer may be required to submit documentation demonstrating that he or she qualified under the program or income based eligibility requirements in section (2) or (3) of this rule.

(10) The Commission will verify a customer's continuing eligibility. Continuing OTAP and Lifeline eligibility is based on monthly, quarterly, or annual verification by the Commission.

(a) The Commission will allow a customer 30 days following the date of the notice of termination or de-enrollment to demonstrate continued eligibility. A customer may be required to submit proof of continued eligibility to the Commission.

(b) The Eligible Telecommunications Provider must de-enroll the customer from the OTAP and Lifeline program within five business days of notice from the Commission that the customer is no longer eligible for OTAP and the Lifeline program.

(c) After the Commission determines that the customer is not eligible or no longer eligible, the customer may file a written request for a hearing to appeal the determination as specified in the notice of determination.

(d) At the hearing, the customer must provide to the Commission documentation demonstrating that he or she qualifies under the program or income based eligibility requirements listed in section (2) or (3) of this rule.

(11) If the Commission identifies that a customer or household is receiving duplicate support from more than one Eligible Telecommunications Provider, the Commission will attempt to contact the customer to determine the customer's preferred provider and thereafter, based on the available information, select which Eligible Telecommunications Provider must de-enroll the customer.

(12) If a customer does not use the OTAP or Lifeline supported service that the Eligible Telecommunications Provider offers at no charge per the usage requirements defined in 47 C.F.R. § 54 Subpart E (2016) for 30 consecutive days, the Eligible Telecommunications Provider must provide the customer 15 days' notice, using plain language, that the customer's failure to use the OTAP or Lifeline supported service within the 15-day notice period will result in de-enrollment from OTAP or the Lifeline program. If the customer uses the OTAP or the Lifeline supported service within the 15-

day notice period, the Eligible Telecommunications Provider may not terminate the customer's OTAP or Lifeline supported service.

(13) When the customer switches to a different Eligible Telecommunications Provider, the customer must submit to the Commission an application for OTAP or the Lifeline program on a Commission-approved form.

(a) A customer may not receive Lifeline or OTAP benefits for service from an Eligible Telecommunications Provider if the customer has initiated a qualifying Lifeline or OTAP-supported voice telephony service with a different Eligible Telecommunications Provider within the previous 60 days.

(b) A customer may not receive Lifeline benefits for service from an Eligible Telecommunications Provider if the customer has initiated a qualifying Lifeline-supported broadband Internet access service with a different Eligible Telecommunications Provider within the previous 12 months.

(c) A customer may not receive Lifeline or OTAP benefits for service from an Eligible Telecommunications Provider if the customer has initiated a qualifying Lifeline or OTAP supported bundle of voice telephony and broadband Internet access service with a different Eligible Telecommunications Provider within the previous 12 months.

(14) Notwithstanding subsections (13)(a) – (c) of this rule, the customer may switch to a different Eligible Telecommunications Provider if:

(a) The customer moves to a different residential address;

(b) The Eligible Telecommunications Provider ceases operations or otherwise fails to provide service;

(c) The Eligible Telecommunications Provider has imposed late fees for non-payment related to the supported service greater than or equal to the monthly end-user charge for service;

(d) The Federal Communication Commission finds the Eligible Telecommunications Provider to be in violation of the Federal Communication Commission's regulations during the customer's benefit year and the customer is impacted by the violation; or

(e) The Commission finds the Eligible Telecommunications Provider to be in violation of OAR Division 860, Chapter 033 during the customer's benefit year and the customer is impacted by the violation.

(15) If, in a span of 30 days, the customer disconnects and reconnects with the same Eligible Telecommunications Provider, the customer is not required to reapply for the OTAP or Lifeline benefits.

Stat. Auth.: ORS 183, 756, 759 & 1987 OL Ch. 290
Stats. Implemented: ORS 756.040, 759.036 & 1987 OL Ch. 290
Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 5-1992, f. & ef. 2-14-92 (Order No. 92-238); PUC 11-1995, f. & ef. 11-27-95 (Order No. 95-1217); PUC 6-1997, f. & ef. 1-10-97 (Order No. 97-005); PUC 6-1997, f. & cert. ef. 1-10-97; PUC 18-1997, f. & cert. ef. 12-17-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 12-2009, f. & cert. ef. 11-13-09; PUC 9-2011, f. & cert. ef. 10-4-11; PUC 5-2013(Temp), f. & cert. ef. 6-28-13 thru 12-24-13; PUC 7-2013, f. & cert. ef. 12-20-13; PUC 7-2016(Temp), f. 11-22-16, cert. ef. 12-2-16 thru 5-30-17; PUC 5-2017, f. & cert. ef. 5-31-17

860-033-0046

OTAP and Lifeline Accounting, Reporting and Auditing

(1) Based upon accounting procedures approved by the Commission, Eligible Telecommunications Providers and must maintain accounting records so that costs associated with OTAP and Lifeline can be separately identified. Records must be provided to the Commission upon request.

(2) Active OTAP and Lifeline Customer Report: The Active OTAP and Lifeline Customer Report is a listing of all customers receiving the OTAP or Lifeline benefit. The listing may include the customers' telephone numbers, addresses, service types, or Commission-assigned OTAP Identification Number. Each Eligible Telecommunications Provider must submit monthly to the Commission in an electronic format accessible by the Commission, an Active OTAP and Lifeline Customer Report. The Active OTAP and Lifeline Customer Report must be received by the Commission on or before the close of business on the 21st calendar day of the following month.

(3) Order Activity Report: The Order Activity Report is a listing of all OTAP or Lifeline customers whose phone service was disconnected, who voluntarily de-enrolled or were de-enrolled for failure to use the OTAP or Lifeline supported service that the Eligible Telecommunications Provider offers at no charge, and a listing of all OTAP or Lifeline customers whose telephone numbers, addresses, or service initiation dates and service types have changed. Except as specified in section (5) of this rule, each Eligible Telecommunications Provider must submit weekly to the Commission in an electronic format accessible by the Commission an Order Activity Report. The Eligible Telecommunications Provider does not need to submit the Order Activity Report if there is no activity for the week.

(4) No Match Report: When the Commission notifies the Eligible Telecommunications Provider of customers who meet eligibility criteria,

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the Eligible Telecommunications Provider must submit an electronic No Match Report in a format accessible by the Commission that contains the following:

(a) Any discrepancy that prevents a customer from receiving the OTAP or Lifeline benefit; and

(b) The Commission-approved low-income customer's service initiation date and service type.

(5) When the Commission issues an order designating a provider of telecommunications service as an Eligible Telecommunications Provider and thereby adopts the terms of a stipulation setting specific requirements for reporting Order Activity and No Match that are different from sections (3) and (4) of this rule, the Eligible Telecommunications Provider may report Order Activity and No Match in a manner consistent with the terms of the stipulation approved by the Commission.

(6) The Commission reserves the right to audit the records of an Eligible Telecommunications Provider that provides OTAP or Lifeline benefits.

(7) OTAP and Lifeline Records: Each Eligible Telecommunications Provider must keep all OTAP and Lifeline records and supporting documentation for three years, or if a Commission review or audit is pending, until the review or audit is complete, whichever is later.

(a) An Eligible Telecommunications Provider must produce for inspection or audit upon request of the Commission or its authorized representative all OTAP and Lifeline records and supporting documentation. The Commission, or its representative, must allow the Eligible Telecommunications Provider a reasonable time to produce the records for inspection or audit.

(b) In addition to any other penalty allowed by law, the Commission may suspend or cancel an Eligible Telecommunications Provider's certificate of authority to provide telecommunications service for its failure to produce for inspection or audit the records required by this rule.

Stat. Auth.: ORS 183, 756, 759 & 1987 OL Ch. 290

Stats. Implemented: ORS 756.040, 759.036 & 1987 OL Ch. 290

Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 18-1997, f. & cert. ef. 12-17-97; PUC 12-2009, f. & cert. ef. 11-13-09; PUC 5-2013(Temp), f. & cert. ef. 6-28-13 thru 12-24-13; PUC 7-2013, f. & cert. ef. 12-20-13; PUC 7-2016(Temp), f. 11-22-16, cert. ef. 12-2-16 thru 5-30-17; PUC 5-2017, f. & cert. ef. 5-31-17

860-033-0050

Tribal Lifeline and Tribal Link-Up

(1) The Commission must determine if a prospective Tribal Lifeline or Tribal Link Up recipient who has executed a certification pursuant to 47 C.F.R. § 54 Subpart E (2013) has previously received a Tribal Lifeline or Tribal Link Up benefit at the residential address provided by the prospective subscriber to prevent duplicative support. An eligible resident of Tribal lands may receive the benefit of the Tribal Link Up program for a second or subsequent time only for otherwise qualifying commencement of telecommunications service at a principal place of residence with an address different from the address for which Tribal Link Up assistance was previously provided.

(2) Within five business days of a request for Tribal Lifeline or Tribal Link Up benefit, the Eligible Telecommunications Provider must submit to the Commission in an electronic format accessible by the Commission the Tribal Lifeline or Tribal Link Up applicant's full name, residential address, date of birth, telephone number associated with the application for Tribal Lifeline or Tribal Link Up benefit, and last four digits of his or her social security number or Tribal identification number. Each Eligible Telecommunications Provider must obtain, from each new and existing subscriber, consent to transmit the information as specified in this section of this rule. Prior to obtaining consent, the Eligible Telecommunications Provider must describe to the subscriber, using plain language, the specific information being submitted, that the information is being submitted to the Commission to ensure proper administration of the Tribal Lifeline and Tribal Link Up program, and that failure to provide consent will result in the subscriber being denied the Tribal Lifeline or Tribal Link Up benefit.

(3) If the Commission notifies the Eligible Telecommunications Provider that a prospective subscriber is receiving a Tribal Lifeline benefit or has received a Tribal Link Up benefit at the residential address provided by the subscriber, the Eligible Telecommunications Provider may not seek universal service support reimbursement for duplicate service.

(4) If the Commission notifies the Eligible Telecommunications Provider that a prospective subscriber is not receiving a Tribal Lifeline benefit or has not received a Tribal Link Up benefit at the residential address provided by the subscriber, the Eligible Telecommunications Provider must provide the customer's service initiation date and service type.

(5) When two or more Eligible Telecommunications Providers submit the information required in section (2) of this rule for the same subscriber, only the Eligible Telecommunications Provider whose information was received and processed by the Commission first, as determined by the Commission, will be entitled to reimbursement from the universal service fund for that subscriber.

(6) Tribal Lifeline and Tribal Link Up Order Activity Report: The Tribal Lifeline and Tribal Link Up Order Activity Report is a listing of all Tribal Lifeline and Tribal Link Up customers whose phone service was disconnected, who voluntarily de-enrolled or were de-enrolled for failure to use the Tribal Lifeline service which the Eligible Telecommunications Provider offers at no charge and a list of all Tribal Lifeline and Tribal Link Up customers whose telephone numbers, addresses, or service initiation dates and service types have changed. Each Eligible Telecommunications Provider must submit this report weekly to the Commission in an electronic format accessible by the Commission. The Eligible Telecommunications Provider does not need to submit the Order Activity Report if there is no activity for the week.

Stat. Auth.: ORS 183, 756, 759 & 1987 OL Ch. 290

Stats. Implemented: ORS 756.040, 759.036 & 1987 OL Ch. 290

Hist.: PUC 9-1988, f. & cert. ef. 4-28-88 (Order No. 88-415); PUC 8-1989, f. & cert. ef. 6-8-89 (Order No. 89-724); PUC 5-1992, f. & ef. 2-14-92 (Order No. 92-238); PUC 2-1996, f. & ef. 4-18-96 (Order 96-102); PUC 6-1997, f. & cert. ef. 1-10-97; PUC 18-1997, f. & cert. ef. 12-17-97; PUC 2-2002, f. & cert. ef. 2-5-02; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 12-2009, f. & cert. ef. 11-13-09; PUC 5-2013(Temp), f. & cert. ef. 6-28-13 thru 12-24-13; PUC 7-2013, f. & cert. ef. 12-20-13; PUC 7-2016(Temp), f. 11-22-16, cert. ef. 12-2-16 thru 5-30-17; PUC 5-2017, f. & cert. ef. 5-31-17

860-033-0110

Advertising, Marketing and Outreach

(1) An Eligible Telecommunications Provider may not conceal or misstate a material fact about OTAP or the Lifeline program in advertising, marketing materials or other outreach to Oregon consumers.

(2) An Eligible Telecommunications Provider must explain in plain language and disclose in OTAP and Lifeline marketing materials:

(a) That the Eligible Telecommunications Provider's offering is an OTAP and Lifeline supported service;

(b) That OTAP and Lifeline are government assistance programs. This disclosure must be conspicuous;

(c) The name of the Eligible Telecommunications Provider or offering the OTAP and Lifeline supported service;

(d) That only eligible low-income customers may enroll in OTAP and Lifeline supported programs;

(e) That proof of eligibility may be necessary for enrollment;

(f) That OTAP and Lifeline supported services are limited to one benefit per household, consisting of either wireline or wireless voice telephony service, a bundle of voice telephony service and broadband Internet access services, or, Lifeline supported broadband Internet access service; and

(g) That OTAP and Lifeline supported services are non-transferable.

(3) The Eligible Telecommunications Provider must provide to the Commission copies of OTAP and Lifeline marketing materials to be released in the State of Oregon at least five business days prior to release.

Stat. Auth.: ORS 183, 756, 759 & 1987 OL Ch. 290

Stats. Implemented: ORS 756.040, 759.036 & 1987 OL Ch. 290

Hist.: PUC 5-2013(Temp), f. & cert. ef. 6-28-13 thru 12-24-13; PUC 7-2013, f. & cert. ef. 12-20-13; PUC 5-2017, f. & cert. ef. 5-31-17

860-033-0530

TDAP Eligibility

(1) A person age four and above may apply to receive an Assistive Telecommunication Device or Adaptive Equipment from the Commission. The application must be submitted using the form provided by the Commission. The TDAP application form is available online at <http://www.puc.state.or.us/PUC/rsp/tdapapp.pdf>, from the Commission and from certain community resources.

(2) A TDAP applicant must provide the Commission with:

(a) Evidence of regular access to a specific telephone number in Oregon;

(b) Evidence of current residency in Oregon; and

(c) A properly completed application including a statement that the applicant is deaf, deaf-blind, hard of hearing, speech or vision impaired, or has a disability that requires adaptive equipment or an assistive telecommunication device to communicate effectively on the telephone. This statement must be signed by:

(A) A licensed physician who may certify that the applicant is deaf, deaf-blind, hard of hearing, speech or vision impaired or has a disability;

(B) A licensed audiologist or a licensed hearing aid specialist who may certify only that the applicant is deaf or hard of hearing;

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(C) A licensed speech-language pathologist who may certify only that the applicant is speech impaired;

(D) A vocational rehabilitation counselor from the Oregon Office of Vocational Rehabilitation Services who may certify that the applicant is deaf, deaf-blind, hard of hearing, speech or vision impaired or has a disability;

(E) A registered nurse practitioner who may certify that the applicant is deaf, deaf-blind, hard of hearing, speech or vision impaired, or has a disability;

(F) A rehabilitation instructor from the Oregon Commission for the Blind who may certify only that the applicant has a vision impairment; or

(G) A licensed physician assistant who may certify that the applicant is deaf, deaf-blind, hard of hearing, speech or vision impaired or has a disability.

(d) For a person under 18 years of age, or an adult who is determined to require a legal guardian, a parent or a guardian must apply on that person's behalf and assume full responsibility for the Assistive Telecommunication Device or Adaptive Equipment and services. An emancipated minor is considered an adult. If the application is signed by a person asserting power of attorney for the applicant or by a legal guardian, the person signing the application may be required to provide the Commission with evidence of the power of attorney or legal guardianship.

(3) The Commission may only approve applications for persons certified as deaf, deaf-blind, hard of hearing, speech or vision impaired or who have a disability and cannot use a telephone for expressive or receptive communication.

(4) The Commission may provide one Assistive Telecommunication Device or one Adaptive Equipment unit per eligible person. The one device or unit provided may also include an accessory device such as a loud ringer or signal device, as applicable. More than one Assistive Telecommunication Device or Adaptive Equipment unit may be provided to a household if more than one eligible person permanently resides in the household.

(5) If the Commission purchases new devices that may benefit a TDAP recipient more than the equipment currently provided by the Commission to the recipient, the Commission may allow the recipient to use both the current and new device for a 60-day trial period. The recipient must return the less beneficial equipment to the TDAP within five business days after the end of the trial period. If the recipient fails to return the equipment, the recipient is responsible for paying the Commission for the cost of the more expensive equipment.

Stat. Auth.: ORS 183, 756, 759 & 1987 OL Ch. 290
Stats. Implemented: ORS 756.040, 759.036 & 1987 OL Ch. 290
Hist.: PUC 7-1988, f. & cert. ef. 4-6-88 (Order No. 88-339); PUC 18-1989, f. & cert. ef. 12-14-89 (Order No. 89-1602); PUC 5-1992, f. & cert. ef. 2-14-92 (Order No. 92-238); PUC 18-1997, f. & cert. ef. 12-17-97; PUC 12-1999, f. & cert. ef. 11-18-99; PUC 19-2003, f. & cert. ef. 11-14-03; PUC 16-2004, f. & cert. ef. 12-1-04; PUC 12-2009, f. & cert. ef. 11-13-09; PUC 9-2011, f. & cert. ef. 10-4-11; PUC 5-2013(Temp), f. & cert. ef. 6-28-13 thru 12-24-13; PUC 7-2013, f. & cert. ef. 12-20-13; PUC 5-2017, f. & cert. ef. 5-31-17

Veterinary Medical Examining Board Chapter 875

Rule Caption: Eliminates restrictions on veterinary facility management.

Adm. Order No.: VMEB 5-2017

Filed with Sec. of State: 5-16-2017

Certified to be Effective: 5-16-17

Notice Publication Date: 4-1-2017

Rules Amended: 875-010-0031

Subject: Repeals 875-010-0031(3)(F). Eliminates certain restrictions on veterinary facility management (number of facilities managed, geographic limitations).

Rules Coordinator: Lori V. Makinen—(971) 673-0224

875-010-0031

Registration of Veterinary Facilities; Managing Veterinarian; Registration Denial, Suspension, Revocation; Inspection

(1) Each veterinary medical facility in Oregon as defined in 875-005-0005 must register with the Board and designate a Managing Veterinarian with the following exceptions:

(a) Any facilities owned and operated by a local, regional, state or federal government agency

(b) Facilities where privately owned animals are housed and where mobile veterinarians or mobile veterinary clinics may routinely come to

provide veterinary services, e.g., private barn, home, boarding stable or animal event location

(c) Locations where animals are undergoing a medical crisis and conditions preclude transport to a veterinary facility (accident site)

(d) Temporary facilities established under a declared emergency

(e) Teaching facilities as established by AVMA-accredited schools of veterinary science or veterinary technology.

(2) Requirements for registered Veterinary Facilities

(a) Each facility registration expires on December 31st or upon a change in facility ownership.

(b) Each facility identified by a separate physical address will be considered a separate facility requiring registration.

(c) Mobile facilities, unless operated as a satellite of a registered fixed facility, will require individual registration.

(d) Temporary facilities, providing only spay/neuter, vaccinations, micro-chipping and examinations may operate up to 15 days per year at any one location under the registration of an Oregon fixed-location facility and under the oversight of the fixed-location's Managing Veterinarian, unless otherwise approved by the Board.

(3) Requirements for the Managing Veterinarian.

(a) Provide the Board with documented authority from the facility owner to maintain the facility within the standards set forth by this chapter.

(b) Ensure facilities maintain and post a valid facility registration issued by the Board.

(c) Ensure timely provision of medical record copies from the facility when requested.

(d) A veterinary intern (OAR 875-010-0026) may not be designated as Managing Veterinarian.

(e) A licensee with a relevant disciplinary history or who has been or currently is under a disciplinary order of the Board may be denied designation as Managing Veterinarian.

(4) Procedures for any change in the Managing Veterinarian. The Managing Veterinarian on record with the Board as responsible for a facility remains responsible for that facility until one of the following occurs:

(a) The Board is notified in writing of a new Managing Veterinarian that has accepted responsibility.

(b) The Board is notified in writing that the Managing Veterinarian wishes to be relieved of the position and associated responsibilities.

(c) The Managing Veterinarian is incapacitated to the extent that they cannot provide oversight of any facility.

(5) Applicants for facility registration must complete an application form available from the Board.

(6) A completed application will include payment of \$150 registration fee, inspector's or self-certification of compliance with minimum standards of OAR 875-015-0020 and 875-015-0030, and designation of a Managing Veterinarian as defined in 875-015-0065.

(7) Denial of Facility Registration Application. The Board may deny an application for facility registration or renewal if:

(a) The application is incomplete or the registration fee is not submitted.

(b) The facility fails to meet minimum standards or fails to correct deficiencies within an appropriate time frame following inspection.

(c) The designated Managing Veterinarian fails meet the minimum facility standards listed in OAR 875-015-0020 and 875-015-0030.

(d) No Managing Veterinarian, meeting all requirements of this chapter, has been designated.

(8) Suspension or Revocation of a Facility Registration. The Board may withhold, suspend or revoke a facility registration if:

(a) No Managing Veterinarian is designated for the facility for more than 15 consecutive days. An interim Managing Veterinarian may be designated for a period not to exceed 30 days total.

(b) When it has been determined by the Board that the managing Veterinarian has failed to meet all the minimum facility standards as provided for in the rules of this act.

(c) Investigation or inspection has revealed unresolved public health and safety risks or other conditions noncompliant with OAR 875-015-0020 and 875-015-0030.

(9) All Facility Registrations terminate upon a change in the facility owner.

(10) Inspection of Facilities: The purpose of inspection is to ensure that public health and safety is maintained by meeting the minimum facility standards listed in OAR 875-015-0020 and 875-015-0030. The Board may designate or employ qualified persons to do the inspections and may delegate inspections to other state or federal agency regulators. Prior to January 2017 the Board may accept self-certification of compliance by the

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Managing Veterinarian in-lieu-of inspection. This self-certification shall be submitted using a form provided by the Board.

- (a) The Board may inspect each veterinary facility:
- (A) Before a new facility receives an initial facility registration
- (B) Periodically, at least once every three years
- (b) The board may inspect any veterinary facility:

(A) At any time upon receipt of a complaint or if it has cause to believe the facility is noncompliant with OAR 875-015-0020 or 875-015-0030.

(B) Upon a change in ownership or a change in the Managing Veterinarian

(C) As follow-up at any time after an inspection has found non-compliant conditions.

(c) Initial and periodic facility inspections may be waived for facilities holding a current American Animal Hospital Association (AAHA) certification.

(d) Inspections may be documented in writing and by audio, video and still picture recording.

(e) Upon an inspection finding of non-compliance with OAR 875-015-0020 or 875-015-0030, the Board or its representative may do any or all of the following:

(A) Establish a reasonable time line for bringing the facility into compliance

(B) Issue a civil penalty or citation

(C) Restrict facility operations when the failure to meet minimum facility standards poses an unresolved risk to public health and safety or other conditions noncompliant with OAR 875-015-0020 or 875-015-0030.

Stat. Auth.: ORS 686.210

Stats. Implemented: ORS 686.130

Hist.: VMEB 1-2015, f. & cert. ef. 11-13-15; Suspended by VMEB 5-2016(Temp), f. & cert. ef. 12-12-16 thru 6-9-17; VMEB 5-2017, f. & cert. ef. 5-16-17

Rule Caption: Prohibits administration of rabies vaccine by student interns.

Adm. Order No.: VMEB 6-2017

Filed with Sec. of State: 5-16-2017

Certified to be Effective: 5-16-17

Notice Publication Date: 4-1-2017

Rules Amended: 875-010-0045

Subject: Prohibits administration of rabies vaccine by veterinary school student interns and Certified Veterinary Technician student interns. Aligns Veterinary Practice Act with Oregon Health Authority OAR 333-019-0017.

Rules Coordinator: Lori V. Makinen—(971) 673-0224

875-010-0045

Student Interns

(1) Any person wishing to work in Oregon as a student intern may do so if he or she is engaged in a student intern program administered by a veterinary college or university, or a veterinary technology program, approved by the Board or the American Veterinary Medical Association.

(2) Supervision of veterinary school student interns. All acts which a student intern may perform must be under the direct supervision of a licensed veterinarian. "Direct supervision" means that each act shall be performed by the student intern only after receiving specific directions from and in the presence of an Oregon licensed veterinarian. Certified Veterinary Technician student interns may work under direct supervision of a licensed veterinarian or Certified Veterinary Technician.

(3) Student interns may perform the following acts:

(a) Obtaining and Recording Information. Student interns may obtain and record the following information:

(A) Complete admission records, including recording the statements made by the client concerning the patient's problems and history. Student interns may also record their own observations of the patient. However, student interns cannot state or record their opinion concerning diagnosis of the patient;

(B) Maintain daily progress records, surgery logs, X-ray logs, Drug Enforcement Agency logs, and all other routine records as directed by the supervising veterinarian.

(b) Veterinary school student interns may perform surgery, if relevant coursework has been successfully completed, and if determined by the supervising veterinarian to be competent in basic surgical techniques;

(c) Preparation of patients, instruments, equipment, and medications for surgery. Student interns may:

(A) Prepare and sterilize surgical packs;

(B) Clip, surgically scrub, and disinfect the surgical site in preparation for surgery;

(C) Administer preanesthetic drugs as prescribed by the supervising veterinarian;

(D) Position the patient for anesthesia;

(E) Administer anesthesia as prescribed by the supervising veterinarian;

(F) Operate anesthetic machines, oxygen equipment, and monitoring equipment.

(d) Collection of specimens and performance of laboratory procedures. Student Interns may:

(A) Collect urine, feces, sputum, and all other excretions for laboratory analysis;

(B) Collect blood samples for laboratory;

(C) Collect skin scrapings;

(D) Perform routine laboratory procedures including urinalysis, fecal analyses, hematological, and serological examinations.

(e) Assisting the veterinarian in diagnostic medical and surgical procedures. Student interns may assist supervising veterinarians in the following diagnostic, medical, and surgical proceedings:

(A) Take the patient's temperature, pulse and respiration;

(B) Medically bathe the patient;

(C) Administer topical, oral, hypodermic, and intravenous medication as directed by the supervising veterinarian;

(D) Operate diagnostic imaging equipment;

(E) Perform dental prophylaxis, including operating ultrasonic dental instruments.

(f) Veterinary School student interns may perform other acts not specifically enumerated herein under the supervision of a veterinarian licensed to practice veterinary medicine in the State of Oregon, however, a student intern may not administer rabies vaccine.

(4) Certified Veterinary Technician student interns may perform all the acts enumerated in OAR 875-030-0040(2) and may not perform the acts prohibited in 875-030-0040(3). Certified Veterinary Technician student interns may not administer rabies vaccine.

Stat. Auth.: ORS 686.210

Stats. Implemented: ORS 686.040(13)

Hist.: VE 7-1978, f. & ef. 7-10-78; VME 2-1994, f. & cert. ef. 11-30-94; VMEB 1-2006, f. & cert. ef. 2-8-06; VMEB 1-2010, f. & cert. ef. 5-6-10; VMEB 3-2014, f. & cert. ef. 1-17-14; VMEB 1-2016(Temp), f. & cert. ef. 8-4-16 thru 1-4-17; VMEB 4-2016(Temp), f. & cert. ef. 12-12-16 thru 6-9-17; VMEB 8-2016, f. & cert. ef. 12-13-16; VMEB 10-2016(Temp), f. & cert. ef. 12-14-16 thru 6-11-17; VMEB 3-2017, f. & cert. ef. 1-12-17; VMEB 6-2017, f. & cert. ef. 5-16-17

Rule Caption: Limits administration of rabies vaccine to licensee or other authorized person.

Adm. Order No.: VMEB 7-2017

Filed with Sec. of State: 5-16-2017

Certified to be Effective: 5-16-17

Notice Publication Date: 4-1-2017

Rules Amended: 875-015-0030

Subject: Limits administration of rabies vaccine to licensee or other authorized person.

Rules Coordinator: Lori V. Makinen—(971) 673-0224

875-015-0030

Minimum Veterinary Practice Standards

Each veterinary medical facility shall comply with the following:

(1) Medical Records: A legible individual record shall be maintained for each animal. However, the medical record for a litter may be recorded either on the dam's record or on a litter record until the individual animals are permanently placed or reach the age of three months. Records for herd or flock animals may be maintained on a group or client basis. All records shall be readily retrievable and must be kept for a minimum of three (3) years following the last treatment or examination. Records shall include, but are not limited to, the following information:

(a) Name or initials of the veterinarian responsible for entries; any written entry to a medical record that is made subsequent to the date of treatment or service must include the date that the entry was added.

(b) Name, address and telephone number of the owner and/or client;

(c) Name, number or other identification of the animal and/or herd or flock;

(d) Species, breed, age, sex, and color or distinctive markings, where applicable, each individual animal;

(e) Vaccination history, if known, shall be part of the medical record;

(f) Beginning and ending dates of custody of the animal;

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(g) Pertinent history and presenting complaint;
(h) A physical exam shall be performed to establish or maintain a VCPR; and then each time an animal is presented with a new health problem, unless the animal's temperament precludes examination, or physical exam is declined by the owner. For each physical exam the following conditions shall be evaluated and findings documented when applicable by species, even if such condition is normal:

- (A) Temperature;
- (B) Current weight or weight estimate for large animals;
- (C) Body condition or score;
- (D) Eyes, ears, nose and throat;
- (E) Oral cavity;
- (F) Cardiovascular and respiratory systems including heart rate and pulse, auscultation of the thorax, trachea, as species appropriate, and respiratory rate;
- (G) Evaluation of the abdomen by palpation and/or auscultation if applicable by species;
- (H) Lymph nodes;
- (I) Musculoskeletal system;
- (J) Neurological system;
- (K) Genito/urinary system;
- (L) Integumentary system
- (M) All data obtained by instrumentation;
- (N) Diagnostic assessment;
- (O) If relevant, a prognosis of the animal's condition;
- (P) Diagnosis or tentative diagnosis at the beginning of custody of animal;

(Q) Treatments and intended treatment plan, medications, immunizations administered, dosages, frequency and route of administration;

(R) All prescription or legend drugs dispensed, ordered or prescribed shall be recorded including: dosage, frequency, quantity and directions for use. Any changes made by telecommunications shall be recorded. Legend drugs in original unopened manufacturer's packaging dispensed or ordered for herd use are exempt from this rule. Legend and prescription drugs are as defined by the U.S. Food and Drug Administration in 'FDA and the Veterinarian'.

(S) Surgical procedures shall be described including name of the surgeon, suture material used, and diagnostic findings;

(T) Progress of the case while in the veterinary medical facility;

(U) Exposed radiographs shall have permanent facility and animal identification;

(V) If a client waives or declines any examinations, tests, or other recommended treatments, such waiver or denial shall be noted in the records.

(2) Surgery: Surgery shall be performed in a manner compatible with current veterinary practice with regard to anesthesia, asepsis or antisepsis, life support and monitoring procedures, and recovery care. The minimum standards for surgery shall be:

(a) Aseptic surgery shall be performed in a room or area designated for that purpose and isolated from other activities during the procedure. A separate, designated area is not necessarily required for herd or flock animal surgery or antiseptic surgery;

(b) The surgery room or area shall be clean, orderly, well-lighted and maintained in a sanitary condition;

(c) All appropriate equipment shall be sterilized:

(A) Chemical disinfection ("cold sterilization") shall be used only for field conditions or antiseptic surgical procedures;

(B) Provisions for sterilization shall include a steam pressure sterilizer (autoclave) or gas sterilizer (e.g., ethylene oxide) or equivalent.

(d) For each aseptic surgical procedure, a separate sterile surgical pack shall be used for each animal. Surgeons and surgical assistants shall use aseptic technique throughout the entire surgical procedure;

(e) Minor surgical procedures shall be performed at least under antiseptic surgical techniques;

(f) All animals shall be prepared for surgery as follows:

(A) Clip and surgically prepare the surgical area for aseptic surgical procedures;

(B) Loose hair must be removed from the surgical area;

(C) Scrub the surgical area with appropriate surgical soap;

(D) Disinfect the surgical area;

(E) Drape the surgical area appropriately.

(3) A veterinarian shall use appropriate and humane methods of anesthesia, analgesia and sedation to minimize pain and distress during any procedures or conditions and shall comply with the following standards:

(a) Animals shall have a documented physical exam conducted within 24 hours prior to the administration of a sedative or anesthetic, which is

necessary for veterinary procedures, unless the temperament of the patient precludes an exam prior to the use of chemical restraint;

(b) An animal under general anesthesia for a medical or surgical procedure shall be under direct observation throughout the anesthetic period and during recovery from anesthesia until the patient is awake and in sternal recumbency;

(c) A method of cardiac monitoring shall be employed to assess heart rate and rhythm repeatedly during anesthesia and may include a stethoscope or electronic monitor;

(d) A method of monitoring the respiratory system shall be employed to assess respiratory rate and pattern repeatedly during anesthesia and may include a stethoscope or electronic monitor.

(e) Where general anesthesia is performed in a hospital or clinic for companion animal species (excluding farm animals), anesthetic equipment available shall include an oxygen source, equipment to maintain an open airway and a stethoscope;

(f) Anesthetic and sedation procedures and anesthetic and sedative medications used shall be documented, including agent used, dosage, route of administration, and strength, if available in more than one strength;

(g) Adequate means for resuscitation including intravenous catheter and fluids shall be available;

(h) Emergency drugs shall be immediately available at all times;

(i) While under sedation or general anesthesia, materials shall be provided to help prevent loss of body heat;

(j) Analgesic medications, techniques and/or husbandry methods shall be used to prevent and minimize pain in animals experiencing or expected to experience pain, including but not limited to all surgical procedures;

(k) Chemical restraint may be used in conjunction with, but not in lieu of, analgesic therapy;

(l) Appropriate analgesic therapy shall be guided by information specific to each case, including but not limited to species, breed, patient health and behavioral characteristics, the procedure performed, and the expected degree and duration of pain;

(4) Library: A library of appropriate and current veterinary journals and textbooks or access to veterinary internet resources shall be available for ready reference.

(5) Laboratory: Veterinarians shall have the capability for use of either in-house or outside laboratory service for appropriate diagnostic testing of animal samples.

(6) Biologicals and drugs: The minimum standards for drug procedures shall be:

(a) All biological substances shall be stored, maintained, administered, dispensed and prescribed in compliance with federal and state laws and manufacturers' recommendations;

(b) Controlled substances and legend drugs shall be dispensed, ordered or prescribed based on a VCPR and shall be labeled with the following:

(A) Name of client and identification of animal(s);

(B) Date dispensed;

(C) Complete directions for use;

(D) Name, strength, dosage and the amount of the drug dispensed;

(E) Manufacturer's expiration date;

(F) Name of prescribing veterinarian and veterinary medical facility.

(c) No biological or drug shall be administered or dispensed after the expiration date, for a fee.

(d) Rabies vaccine shall be administered only by an Oregon-licensed veterinarian, a Certified Veterinary Technician under direct supervision of an Oregon-licensed veterinarian, or a person authorized by the Oregon Public Health Veterinarian pursuant to OAR 333-019-0017.

(e) If requested, a prescription shall be provided to a client for medications prescribed by the veterinarian under a valid VCPR.

(7) A veterinarian shall not use, or participate in the use of, any form of advertising or solicitation which contains a false, deceptive or misleading statement or claim:

(a) Specialty Services: Veterinarians shall not make a statement or claim as a specialist or specialty practice unless the veterinarian is a diplomate of a recognized specialty organization of the American Veterinary Medical Association;

(b) The public shall be informed if an animal will be left unattended in the veterinary facility.

(8) The veterinarian shall be readily available or has arranged for emergency coverage or follow-up evaluation in the event of adverse reaction or the failure of the treatment regimen.

(9) Euthanasia: Documented consent shall be obtained and a physical exam conducted prior to performing euthanasia. The exam may be limited

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to the elements necessary for the humane application of the procedure, such as a weight estimate and visual assessment if necessary due to the patient's condition or temperament. When ownership and identification of an animal cannot be reasonably established, the medical record for euthanasia shall contain a physical description of the animal.

Stat. Auth.: ORS 686.210
Stats. Implemented: ORS 686.040 & 686.370
Hist.: VME 5-1992, f. & cert. ef. 12-10-92; VMEB 1-2006, f. & cert. ef. 2-8-06; VMEB 2-2006, f. & cert. ef. 5-11-06; VMEB 1-2008, f. & cert. ef. 2-11-08; VMEB 2-2010, f. & cert. ef. 5-6-10; VMEB 4-2011, f. & cert. ef. 8-5-11; VMEB 2-2014, f. & cert. ef. 1-17-14; VMEB 3-2016(Temp), f. & cert. ef. 12-12-16 thru 6-9-17; VMEB 7-2017, f. & cert. ef. 5-16-17

Water Resources Department Chapter 690

Rule Caption: Walla Walla Subbasin Serious Water Management Problem Area, Classification and Updates

Adm. Order No.: WRD 2-2017

Filed with Sec. of State: 5-22-2017

Certified to be Effective: 5-22-17

Notice Publication Date: 3-1-2017

Rules Amended: 690-507-0010, 690-507-0020, 690-507-0030, 690-507-0040, 690-507-0050, 690-507-0060, 690-507-0070, 690-507-0080, 690-507-0090, 690-507-0610, 690-507-0620, 690-507-0630, 690-507-0635, 690-507-0640, 690-507-0647, 690-507-0650, 690-507-0660, 690-507-0670, 690-507-0680, 690-507-0690, 690-507-0790

Subject: The Water Resources Commission is charged with developing basin program rules with consideration to the multiple aspects of the beneficial use and control of such water resources to best protect and promote the public welfare of Oregon's citizens generally, including the environmental health of Oregon's watersheds and basins. Available groundwater data show groundwater level declines occurring across the Walla Walla Subbasin of the Umatilla Basin, indicating groundwater use in excess of recharge. Senior groundwater users have reported that they are not able to pump their usual and accustomed rate or volume of water.

The Department is proposing to classify groundwater in the Walla Walla Subbasin for new exempt uses only, as defined in ORS 537.545. This classification is intended to limit new use of the groundwater resource and prevent chronic declining water level trends from getting worse.

The Department is also proposing to establish a Serious Water Management Problem Area (SWMPA) per ORS 540.435. Owners of permitted basalt aquifer wells within the SWMPA will be required to install a totalizing flow meter on each well, measure and record water use on a monthly basis, and report monthly water use to the Department annually. Measurement and reporting of use will eventually allow the Department to determine how much, if any, reduction in current pumping may need to occur to stabilize observed groundwater level declines.

In addition, proposed changes include spell out acronyms, correct spelling, and grammar.

Rules Coordinator: Diana Enright—(503) 986-0874

690-507-0010

Definitions

The following meanings apply to the terms as used in these rules for the Umatilla Basin Program. Other rules of the Department may define these words differently:

(1) "Classification" or "Classified" means the allowed and preferred beneficial use(s) of a given surface or groundwater source for which future appropriations of water shall be permitted.

(2) "Commission" means the Water Resources Commission.

(3) "Department" means the Oregon Water Resources Department.

(4) "Director" means the Water Resources Director.

(5) "Minimum Perennial Streamflow" or "Minimum Streamflow" means an administrative rule that establishes a flow necessary to support aquatic life, recreation or minimize pollution. The rule includes a priority date and specifies streamflow levels for all or any period of the year. It establishes priority for instream use over future appropriations and identifies flow objectives for future management in streams where shortages occur.

(6) "Statutorily Exempt Groundwater Uses" means those uses for which no groundwater application, permit, or certificate is required under ORS 537.545. These uses are for:

(a) Stockwatering purposes;

(b) Watering any lawn or noncommercial garden not exceeding one-half acre in area;

(c) Watering the grounds, three acres in size or less, or schools that have less than 100 students and that are located in cities with a population of less than 10,000;

(d) Single or group domestic purpose in an amount not exceeding 15,000 gallons a day;

(e) Down-hole heat exchange purposes; or

(f) Any single industrial or commercial purpose in an amount not exceeding 5,000 gallons a day.

(7) "Subbasin" means any subarea of a basin defined by surface drainage patterns such as the drainage basin of any tributary, or the area draining to any point on a river or draining between two points on a river.

(8) "Umatilla Basin" means the area comprised by the Walla Walla River, Wildhorse Creek, Upper Umatilla River, Birch and McKay Creeks, Columbia-Umatilla Plateau, Butter Creek, and Willow Creek subbasins as shown on Water Resources Department map number 7.6.

(9) "Withdrawal" or "Withdrawn" means an order of the Commission, or State Engineer or a Legislative act prohibiting all new appropriations for particular uses from a source for part or all of the year. A withdrawal can be set for a prescribed length of time or indefinitely until modified by the Commission.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 26, f. 3-2-64; WRD 1-1981, f. & cert. ef. 4-20-81; WRD 10-1985, f. & cert. ef. 9-3-85; WRD 13, f. & cert. ef. 12-18-85; WRD 14-1985, f. & cert. ef. 12-20-85; WRD 1-1986, RF, & cert. ef. 2-20-86; WRD 1-1987, f. & cert. ef. 2-27-87; WRD 8-1988, f. & cert. ef. 7-5-88; WRD 9-1990, f. & cert. ef. 6-25-90; Administrative Renumbering 1-1993, Renumbered from 690-080-0070; WRD 2-2017, f. & cert. ef. 5-22-17

690-507-0020

Policies

(1) All rights to the surface waters of the Umatilla River and its tributaries initiated after September 28, 1987, shall be subordinate to permitted appropriations for the purpose of artificial groundwater recharge established before that date.

(2) To support present and proposed basin resource developments, no out-of-basin or out-of-state appropriations of water shall be made or granted by any state agency or public corporation of the state for the waters of the Umatilla River Basin.

(3) Rights to use water for industrial or mining purposes granted by any state agency shall be issued only on condition that any effluent or return flows from such uses shall not interfere with other beneficial uses of water.

(4) Future permits for consumptive water use shall be issued only on condition that efficient water use techniques or water conservation measures are proposed in the application. Failure to implement the proposed measures shall be a violation of the terms of the permit.

(5) Municipal water supplies, interstate cooperation in water management, instream needs, out-of-stream needs, water quality and watershed management are issues of concern in the Umatilla River Basin. The Commission's policies on these issues are as follows:

(a) Municipal water supply: In addressing the issue of municipal water supply in the Umatilla River Basin, it shall be the Commission's policy to:

(A) Assist cities with limited financial resources secure needed capital to develop, expand and improve municipal water supplies;

(B) Promote and aid municipal water conservation and encourage cities to plan for water service emergencies;

(C) Encourage the use of artificial groundwater recharge to supplement city groundwater supplies and help reduce water level declines in the basalt groundwater reservoir;

(D) Encourage and promote the concept of regional municipal water supply systems and preserve the options for proposed systems;

(E) Promote and support the purchase and transfer of water rights to municipal use;

(F) Promote the continued viability of municipal water systems reliant on the basalt groundwater reservoir.

(b) Interstate cooperation on water management: In addressing the issue of interstate cooperation on water management, it shall be the Commission's policy to:

(A) Coordinate and cooperate with the state of Washington in managing the water resources of the Walla Walla subbasin to the extent judicial decisions, stipulations and statutory authority allow;

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(B) Open negotiations with the Washington Department of Ecology by 1990.

(c) Instream needs: In addressing the issue of instream needs, it shall be the Commission's policy to:

(A) Support the anadromous fish production goals of the Northwest Power Planning Council, Oregon Department of Fish and Wildlife and Confederated Tribes of the Umatilla Indian Reservation for the Umatilla River Basin;

(B) Protect and enhance instream values by limiting new uses of water from heavily appropriated streams and managing interconnected surface and groundwater conjunctively;

(C) Support and encourage watershed and riparian zone projects which improve instream habitat and water quantity and quality, and which provide multiple water resources benefits.

(d) Out-of-stream use: In addressing the issue of out-of-stream use, it shall be the Commission's policy to:

(A) Require conservation and efficient water use;

(B) Control growth of water demand by limiting new irrigation appropriations on selected streams to stored or conserved water;

(C) Support the efficient use of surplus surface and groundwater to supplement declining groundwater levels through artificial groundwater recharge;

(D) Support development of multipurpose surface storage consistent with policies in paragraphs (A), (B), and (C) of this subsection.

(e) Water quality: In addressing the issue of water quality, it shall be the Commission's policy to:

(A) Encourage and promote a formal groundwater quality monitoring program to ensure safe municipal and domestic groundwater supplies;

(B) Encourage development of management plans for groundwater aquifers susceptible to contamination;

(C) Support surface water quality standards to satisfy selected sub-basin beneficial water uses identified in this basin program;

(D) Encourage and promote control of nonpoint and point sources of water pollution.

(f) Watershed management: In addressing the issue of watershed management, it shall be the Commission's policy to:

(A) Encourage and promote improvements in water quality, quantity, and related resources through agency-public cooperation and education about the benefits of watershed management;

(B) Encourage public and private landowners and managers to employ best management practices to benefit water quality and quantity;

(C) Encourage and support the retirement of highly erodible cropland as a means to enhance water quality and improve runoff patterns;

(D) Encourage and support riparian and stream channel enhancement as a means of improving flow distribution, water quality and related resource values.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 26, f. 3-2-64; WRD 1-1981, f. & cert. ef. 4-20-81; WRD 10-1985, f. & cert. ef. 9-3-85; WRD 13, f. & cert. ef. 12-18-85; WRD 14-1985, f. & cert. ef. 12-20-85; WRD 1-1986, RF, & cert. ef. 2-20-86; WRD 1-1987, f. & cert. ef. 2-27-87; WRD 8-1988, f. & cert. ef. 7-5-88; WRD 9-1990, f. & cert. ef. 6-25-90; Administrative Renumbering 1-1993, Renumbered from 690-080-0070; WRD 2-2017, f. & cert. ef. 5-22-17

690-507-0030

Walla Walla River Subbasin

(1) Objectives: In developing a program for the management, use and control of the surface and groundwater resources of the Walla Walla subbasin, the Commission has the following objectives:

(a) Develop interstate cooperation with Washington in the management of surface and groundwater and related resources;

(b) Protect instream values in selected streams by closing them to future appropriations or limiting new appropriations to selected nonirrigation uses;

(c) Preserve the opportunity for future upstream storage for all beneficial uses;

(d) Permit artificial groundwater recharge to offset declining groundwater levels and supplement existing groundwater uses;

(e) Protect municipal groundwater supplies;

(f) Prevent new appropriations from causing groundwater/ surface water interference.

(2) Surface Water: Appropriation and use of surface water in the Walla Walla River subbasin shall comply with the following provisions:

(a) The unappropriated waters of the Walla Walla River and tributaries from and including the Little Walla Walla Diversion to the state border are withdrawn from further appropriation. This withdrawal does not apply to domestic, livestock, fish and wildlife uses or water released from stor-

age. Frost protection between March 1 and May 15, up to a cumulative total of 35 cfs of permits and rights with priority dates after December 2, 1985, is also exempt from this withdrawal. This withdrawal was established by the Commission on January 17, 1986;

(b) The waters of Dugger Creek and tributaries, being entirely appropriated, are withdrawn from further appropriation. The purpose of the withdrawal is to avoid conflict between new uses and existing rights and administrative problems in the distribution of water resulting from new appropriations. The withdrawal was ordered by the State Engineer on August 12, 1933;

(c) Classification: Permits to use surface water may be issued only for the following classified uses:

(A) The surface waters of the Walla Walla River subbasin generally, are classified for domestic, livestock, irrigation, municipal, industrial, power development (subject to the limitations of OAR Chapter 690, Division 51), mining, fish life, wildlife, recreation, pollution abatement, artificial groundwater recharge, and public instream uses only;

(B) The surface waters of the Walla Walla River and tributaries upstream from the Little Walla Walla diversion are classified for domestic, livestock, irrigation of noncommercial lawn and garden not to exceed 1/2 acre, municipal, mining, fish life, wildlife, recreation, pollution abatement, artificial groundwater recharge and public instream uses only;

(C) Subject to the rights and priorities existing on June 24, 1988, and established minimum perennial streamflows, 40,000 acre-feet of the annual yield of the Walla Walla River upstream from the Little Walla Walla diversion is further classified for all beneficial uses in conjunction with storage. All natural flow rights issued on the Walla Walla River and its tributaries upstream from the Little Walla Walla diversion after June 24, 1988, shall be subordinate to this classification. Any storage project built under this classification shall include provisions for municipal, fish and wildlife, and recreation uses acceptable to the Commission;

(D) The surface waters of Mill Creek and tributaries are classified for domestic, livestock, irrigation of noncommercial lawn and garden not to exceed 1/2 acre, fish life, wildlife, pollution abatement, artificial groundwater recharge and public instream uses only.

(E) The surface waters of Couse and Pine Creeks and tributaries are classified for domestic, livestock, irrigation or noncommercial lawn and garden not to exceed 1/2 acre, fish life, wildlife, pollution abatement, artificial groundwater recharge and public instream uses only.

(d) Storage: Surface waters legally stored and legally released may be used for any beneficial purpose;

(e) Artificial groundwater recharge: Use of surface water for groundwater recharge shall be subject to the following conditions:

(A) Recharged water used under a secondary permit for irrigation may only provide supplemental water to lands with existing irrigation rights or permits on June 24, 1988;

(B) Diversion of surface water for recharge for irrigation under a secondary permit shall not exceed 3.375 acre feet per acre to be irrigated;

(C) If the recharged water is to be used for municipal or industrial purposes under a secondary permit, the applicant shall demonstrate to the satisfaction of the Commission that it has an active water conservation program; and

(D) Water shall be recharged only between December 1 and May 15.

(f) Minimum perennial streamflows: Minimum streamflows may be established to support aquatic life, minimize pollution or maintain recreation values:

(A) To support aquatic life in accordance with Section 3, Chapter 796, Oregon Laws 1983, no appropriation of water shall be made or granted by any state agency or public corporation of the state for waters of the Walla Walla River and tributaries when flows are below the levels specified in Table 1. This limitation shall not apply to domestic and livestock use or to waters legally stored or released from storage; and

(B) To support aquatic life, no appropriations of water except for domestic and livestock uses or waters legally stored or released from storage shall be made or granted by any state agency or public corporation of the state when flows are below the specified levels for the streams listed in Table 1 with priority dates of 3-31-88.

(3) Groundwater: The groundwater resources of the Walla Walla River subbasin are classified for statutorily exempt uses only as provided in and as consistent with ORS 537.545.

(4) Basalt Well Flow Meter Installation and Groundwater Use Reporting: The Commission establishes a Serious Water Management Problem Area (SWMPA, ORS 540.435) as shown in Exhibit 507-1.

(a) As used in 690-507-0030(4):

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(A) "Basalt well" is a water supply well that develops groundwater from the Columbia River Basalt Group within the designated SWMPA.

(B) "Totalizing flow meter" is an instrument used to measure and display both the instantaneous flow rate of groundwater produced from the well and the total volume of groundwater produced from the well.

(b) By no later than January 1, 2019, each water right holder, well owner, or well operator, shall properly install and thereafter properly maintain a totalizing flow meter on each basalt well within the SWMPA boundary listed as a point of appropriation on a valid water right. Totalizing flow meters must meet the specifications in subsections (e)-(h) and shall be properly installed according to manufacturer's specifications.

(c) Totalizing flow meters and the method of flow meter installation are subject to approval by Department Staff. Once installed, totalizing flow meters must be maintained in good working order. Department staff shall have access to the totalizing flow meters upon request.

(d) The water right holder, well owner, or well operator shall keep a complete record of the volume of water appropriated each month, and shall submit a report which includes water use measurements to the Department on an annual basis by January 31 of each calendar year. The Director may request submission of reports more frequently as necessary to monitor and administer the SWMPA. Reports of water use measurements shall be submitted to the Department during the month of January of the preceding year, or more frequently as required by the Director. Reports shall be submitted on a form developed by the Department.

(e) A totalizing flow meter shall meet the following specifications:

(A) A totalizing flow meter shall have a rated accuracy of plus or minus 2 percent of actual flow for all flow rates for which the meter is expected to measure.

(B) A totalizing flow meter shall register the full range of discharge from the well.

(C) A totalizing flow meter shall have a visual and recording, mechanical or digital totalizer located on or adjacent to the flow meter, and shall be equipped with a sweep hand or digital readout so that instantaneous flow rate can be read.

(f) The totalizing part of the flow meter shall have sufficient capacity to record the quantity of water authorized to be pumped over a period of 2 years. Units of water measurement shall be in acre-feet, cubic feet, or gallons and the totalizer shall read directly in one of these units. Flow meters recording in acre-feet shall, at a minimum, read to the nearest 1/10th acre foot, and the decimal multiplier shall be clearly indicated on the face of the register head.

(g) Totalizers on each meter shall not be field reset without notice to and written permission from the Watermaster.

(h) The totalizing flow meter shall be installed in accordance with all manufacturer specifications. There shall be no turnouts or diversions between the well and the flow meter. The flow meter shall be installed not less than five pipe diameters downstream from any valve, elbow, or other obstruction which might create turbulent flow, or other provisions shall be made that meet the manufacturer's specifications to control or eliminate turbulent flow.

(i) Failure to have and maintain a properly installed, functioning totalizing flow meter by January 1, 2019 will result in the Watermaster regulating and controlling an unmetred well such that no groundwater may be pumped or appropriated until a flow meter is obtained and installed consistent with these rules.

(j) Consistent with ORS 536.900, Chapter 183, and OAR Chapter 690 division 260, the Department may assess civil penalties for violation of these rules.

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

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 26, f. 3-2-64; WRD 1-1981, f. & cert. ef. 4-20-81; WRD 10-1985, f. & cert. ef. 9-3-85; WRD 13, f. & cert. ef. 12-18-85; WRD 14-1985, f. & cert. ef. 12-20-85; WRD 1-1986, RF, & cert. ef. 2-20-86; WRD 1-1987, f. & cert. ef. 2-27-87; WRD 8-1988, f. & cert. ef. 7-5-88; WRD 9-1990, f. & cert. ef. 6-25-90; Administrative Renumbering 1-1993, Renumbered from 690-080-0070; WRD 2-2017, f. & cert. ef. 5-22-17

690-507-0040

Wildhorse Creek Subbasin

(1) Objectives: In developing a program for the management, use and control of the surface and groundwater resources of the Wildhorse Creek subbasin, the Commission has the following objectives:

(a) Protect instream values by closing streams to future appropriations during the low-flow season and limiting future appropriations during the high-flow season to selected nonirrigation or nonconsumptive uses;

(b) Permit artificial groundwater recharge to offset declining groundwater levels and supplement existing groundwater uses;

(c) Protect municipal groundwater supplies;

(d) Prevent new appropriations from causing groundwater/surface water interference;

(e) Support efforts to reduce nonpoint source sediment loads in sub-basin streams.

(2) Surface Water: Appropriation and use of surface water in the Wildhorse Creek subbasin shall comply with the following provisions:

(a) Wildhorse Creek and tributaries are withdrawn from further appropriation of unappropriated waters during the period June 1 through October 31 each year. The withdrawal does not apply to domestic, live-stock, fish and wildlife uses or water released from storage. This action was taken by the Commission on December 2, 1985;

(b) Classification: Permits to use the surface waters of Wildhorse Creek and tributaries may be issued only for domestic, livestock, irrigation of noncommercial lawn and garden not to exceed 1/2 acre, power development (subject to the limitations of OAR Chapter 690, Division 51), mining, fish life, wildlife, recreation, pollution abatement, artificial groundwater recharge and public instream uses during the period November 1 through May 31 each year. This classification rescinds the Commission's order of December 2, 1985, withdrawing the Umatilla River and tributaries from further appropriation from November 1 through May 31 each year until December 31, 1988.

(c) Storage: Surface water legally stored during the period November 1 through May 31 and legally released may be used for any beneficial purpose;

(d) Artificial groundwater recharge: Use of surface water for groundwater recharge shall be subject to the following conditions:

(A) Recharged water used under a secondary permit for irrigation may only provide supplemental water to lands with existing irrigation rights or permits on June 24, 1988;

(B) Diversion of surface water for recharge for irrigation under a secondary permit shall not exceed 2.25 acre feet per acre to be irrigated; and

(C) If the recharged water is to be used for municipal or industrial purposes under a secondary permit, the applicant shall demonstrate to the satisfaction of the Commission that it has an active water conservation program.

(3) Groundwater: Appropriation and use of groundwater in the Wildhorse Creek subbasin shall comply with the following provisions:

(a) Classification: Permits to use groundwater may be issued only for the following classified uses:

(A) The groundwater resources of the Wildhorse Creek subbasin are classified for statutorily exempt groundwater uses (see definition), irrigation, municipal, industrial, power development, low temperature geothermal, mining, fish life, wildlife, recreation, pollution abatement, and artificial groundwater recharge; and

(B) Groundwater from the basalt reservoir in a five-mile radius around any municipal well of the cities of Adams, Athena, Helix, Pendleton, and Weston is classified for municipal, group domestic and statutorily exempt groundwater uses (see definition) only. Other uses may be permitted if it is documented that a barrier to groundwater movement separates a proposed well from municipal wells and there will be no interference with municipal wells. Applications for other uses of groundwater within a five-mile radius of a municipal well shall automatically be referred to the Commission for review and consideration of public interest unless the affected city affirms that it is in favor of the proposed appropriation. This classification applies only when the affected city(ies) have a full-time conservation program in effect.

(b) Permits issued to appropriate groundwaters that may be hydraulically connected with surface water shall be specially conditioned. The condition shall specify that when exercise of the permit unduly interferes with surface water, the permit will be regulated in favor of the surface water source.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 26, f. 3-2-64; WRD 1-1981, f. & cert. ef. 4-20-81; WRD 10-1985, f. & cert. ef. 9-3-85; WRD 13, f. & cert. ef. 12-18-85; WRD 14-1985, f. & cert. ef. 12-20-85; WRD 1-1986, RF, & cert. ef. 2-20-86; WRD 1-1987, f. & cert. ef. 2-27-87; WRD 8-1988, f. & cert. ef. 7-5-88; WRD 9-1990, f. & cert. ef. 6-25-90; Administrative Renumbering 1-1993, Renumbered from 690-080-0070; WRD 2-2017, f. & cert. ef. 5-22-17

690-507-0050

Upper Umatilla River Subbasin

(1) Objectives: In developing a program for the management, use and control of the surface and groundwater resources of the Upper Umatilla River subbasin, the Commission has the following objectives:

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(a) Protect instream values by closing streams to future appropriations during the low-flow season and limiting future appropriations during the high-flow season to selected nonirrigation uses;

(b) Acknowledge the Confederated Tribes of the Umatilla Indian Reservation have an unquantified claim to water and preserve the opportunity for the Tribes to store excess winter flows for Tribal use or purposes;

(c) Preserve the opportunity for future upstream storage for all beneficial uses;

(d) Promote municipal use of surface waters;

(e) Permit artificial groundwater recharge to offset declining groundwater levels and supplement existing groundwater uses;

(f) Protect municipal groundwater supplies;

(g) Prevent new appropriations from causing groundwater/surface water interference.

(2) Surface Water: Appropriation and use of surface water in the Upper Umatilla River subbasin shall comply with the following provisions:

(a) Subject to the rights existing on March 3, 1941 the waters of the North Fork Umatilla River and its tributaries were set aside by the Oregon Legislature for the exclusive use of the City of Pendleton, ORS 538.450. Nothing in the statute prohibits the City of Pendleton from using the main stem Umatilla River to convey this water to the City;

(b) The Upper Umatilla River and tributaries are withdrawn from further appropriation of unappropriated waters during the period June 1 through October 31 each year. The withdrawal does not apply to domestic, livestock, fish and wildlife uses or water released from storage. This action was taken by the Commission on December 2, 1985;

(c) Classification: Permits to use surface water may be issued only for the following classified uses:

(A) Natural flows of the Upper Umatilla River and tributaries are classified for domestic, livestock, irrigation or noncommercial lawn and garden not to exceed 1/2 acre, municipal, industrial, power development (subject to the limitations of OAR Chapter 690, Division 51) mining (including sand and gravel mining), fish life, wildlife, recreation, pollution abatement, artificial groundwater recharge, and public instream uses during the period November 1 through May 31 each year. This classification rescinds the Commission's order of December 2, 1985, withdrawing the Umatilla River and tributaries from further appropriation from November 1 through May 31 each year until December 31, 1988;

(B) Until there is a final quantification of any reserved water rights of the Confederated Tribes of the Umatilla Indian Reservation, up to 75,000 acre feet of water in the Upper Umatilla River subbasin are classified for storage for the exclusive use of the Tribes. This classification applies to storage on or off the reservation in a single or multiple impoundments. Storage of this water is subject to the rights and priorities existing on June 24, 1988, and the withdrawal of the Umatilla River and tributaries from June 1 through October 31. All natural flow rights issued on the Umatilla River and its tributaries upstream from Pendleton and on the Umatilla main stem downstream from Pendleton after June 24, 1988, shall be subordinate to this classification. This classification shall be superior to the classification for storage contained in paragraph (C) of this subsection; and

(C) Subject to the rights and priorities existing on June 24, 1988, the withdrawal of the Umatilla River and tributaries from June 1 through October 31, and the 75,000 acre foot classification in paragraph (B) of this subsection, up to 100,000 acre feet of the annual yield of the Umatilla River above Pendleton are classified for all beneficial uses in conjunction with storage. All natural flow rights issued on the Umatilla River and its tributaries upstream from Pendleton and on the Umatilla main stem downstream from Pendleton after this date shall be subordinate to this classification, except that up to a total of 20,000 acre feet of additional permits may be granted for artificial groundwater recharge without subordination under this paragraph. Any storage project built under this classification shall include provisions for municipal, fish and wildlife, and recreation uses acceptable to the Commission.

(d) Storage: Surface water legally stored during the period November 1 through May 31, and legally released may be used for any beneficial purpose;

(e) Artificial groundwater recharge: Use of surface water for groundwater recharge shall be subject to the following conditions:

(A) Recharged water used under a secondary permit for irrigation may only provide supplemental water to lands with existing irrigation rights or permits on June 24, 1988;

(B) Diversion of surface water for recharge for irrigation under a secondary permit shall not exceed 2.25 acre feet per acre to be irrigated; and

(C) If the recharged water is to be used for municipal or industrial purposes under a secondary permit, the applicant shall demonstrate to the

satisfaction of the Commission that it has an active water conservation program.

(f) Minimum perennial streamflows: Minimum streamflows may be established to support aquatic life, minimize pollution or maintain recreation values:

(A) To support aquatic life in accordance with Section 3, Chapter 796, Oregon Laws 1983, no appropriation of water shall be made or granted by any state agency or public corporation of the state for waters of the Umatilla River and tributaries when flows are below the levels specified in Table 1. This limitation shall not apply to domestic and livestock use or to waters legally stored or released from storage; and

(B) To support aquatic life, no appropriations of water except for domestic and livestock uses or waters legally stored or released from storage shall be made or granted by any state agency or public corporation of the state when flows are below the specified levels for the streams listed in Table 1 with priority dates of 3-31-88.

(3) Groundwater: Appropriation and use of groundwater in the Upper Umatilla River subbasin shall comply with the following provisions:

(a) Classification: Permits to use groundwater may be issued only for the following classified uses:

(A) The groundwater resources of the Upper Umatilla River subbasin are classified for statutorily exempt groundwater uses (see definition), irrigation, municipal, industrial, power development, low temperature geothermal, mining, fish life, wildlife, recreation, pollution abatement, and artificial groundwater recharge; and

(B) Groundwater from the basalt reservoir in a five-mile radius around any municipal well of the cities of Adams and Pendleton is classified for municipal, group domestic and statutorily exempt groundwater uses (see definition) only. Other uses may be permitted if it is documented that a barrier to groundwater movement separates a proposed well from municipal wells and there will be no interference with municipal wells. Applications for other uses of groundwater within a five-mile radius of a municipal well shall automatically be referred to the Commission for review and consideration of public interest unless the affected city affirms that it is in favor of the proposed appropriation. This classification applies only when the affected city(ies) have a full-time conservation program in effect.

(b) Permits issued to appropriate groundwaters that may be hydraulically connected with surface water shall be specially conditioned. The condition shall specify that when exercise of the permit unduly interferes with surface water, the permit will be regulated in favor of the surface water source.

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

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 26, f. 3-2-64; WRD 1-1981, f. & cert. ef. 4-20-81; WRD 10-1985, f. & cert. ef. 9-3-85; WRD 13, f. & cert. ef. 12-18-85; WRD 14-1985, f. & cert. ef. 12-20-85; WRD 1-1986, RF, & cert. ef. 2-20-86; WRD 1-1987, f. & cert. ef. 2-27-87; WRD 8-1988, f. & cert. ef. 7-5-88; WRD 9-1990, f. & cert. ef. 6-25-90; Administrative Renumbering 1-1993, Renumbered from 690-080-0070; WRD 2-2017, f. & cert. ef. 5-22-17

690-507-0060

Birch and McKay Creeks Subbasin

(1) Objectives: In developing a program for the management, use and control of the surface and groundwater resources of the Birch and McKay Creeks subbasin, the Commission has the following objectives:

(a) Protect instream values by closing streams to future appropriations during the low-flow season and limiting future appropriations during the high-flow season to selected nonirrigation uses;

(b) Preserve the opportunity for future upstream storage for all beneficial uses;

(c) Permit artificial groundwater recharge to offset declining groundwater levels and supplement existing groundwater uses;

(d) Protect municipal groundwater supplies;

(e) Prevent new appropriations from causing groundwater/surface water interference.

(2) Surface Water: Appropriation and use of surface water in the Birch and McKay Creeks subbasin shall comply with the following provisions:

(a) Birch and McKay Creeks and their tributaries are withdrawn from further appropriation of unappropriated waters during the period June 1 through October 31 each year. The withdrawal does not apply to domestic, livestock, fish and wildlife uses or water released from storage. This action was taken by the Commission on December 2, 1985;

(b) Classification: Permits to use surface water may be issued only for the following classified uses:

(A) The surface waters of Birch and McKay Creeks and tributaries are classified for domestic, livestock, irrigation of noncommercial lawn and

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garden not to exceed 1/2 acre, municipal, industrial, power development (subject to the limitations of OAR Chapter 690, Division 51) mining (including sand and gravel mining), fish life, wildlife, recreation, pollution abatement, artificial groundwater recharge, and public instream uses during the period November 1 through May 31 each year. This classification rescinds the Commission's order of December 2, 1985, withdrawing the Umatilla River and tributaries from further appropriation from November 1 through May 31 each year until December 31, 1988;

(B) Subject to the rights and priorities existing on June 24, 1988, the withdrawal of Birch Creek and tributaries from June 1 through October 31, Birch Creek and tributaries are further classified for all beneficial uses in conjunction with storage. All natural flow rights issued on Birch Creek and tributaries after this date shall be subordinate to this classification. Any storage project built under this classification shall include provisions for municipal, fish and wildlife, and recreation uses acceptable to the Commission.

(c) Storage: Surface water legally stored during the period November 1 through May 31, and legally released may be used for any beneficial purpose;

(d) Artificial groundwater recharge: Use of surface water for groundwater recharge shall be subject to the following conditions:

(A) Recharged water used under a secondary permit for irrigation may only provide supplemental water to lands with existing irrigation rights or permits on June 24, 1988;

(B) Diversion of surface water for recharge for irrigation under a secondary permit shall not exceed 2.25 acre feet per acre to be irrigated; and

(C) If the recharged water is to be used for municipal or industrial purposes under a secondary permit, the applicant shall demonstrate to the satisfaction of the Commission that it has an active water conservation program.

(e) Minimum perennial streamflows: Minimum streamflows may be established to support aquatic life, minimize pollution or maintain recreation values:

(A) To support aquatic life in accordance with Section 3, Chapter 796, Oregon Laws 1983, no appropriation of water shall be made or granted by any state agency or public corporation of the state for waters of the Umatilla River and tributaries when flows are below the levels specified in Table 1. This limitation shall not apply to domestic and livestock use or to waters legally stored or released from storage; and

(B) To support aquatic life, no appropriations of water except for domestic and livestock uses or waters legally stored or released from storage shall be made or granted by any state agency or public corporation of the state when flows are below the specified levels for the streams listed in Table 1 with priority dates of 3-31-88.

(3) Groundwater: Appropriation and use of groundwater in the Birch and McKay Creeks subbasin shall comply with the following provisions:

(a) Classification: Permits to use groundwater may be issued only for the following classified uses:

(A) The groundwater resources of the Birch and McKay Creeks subbasin are classified for statutorily exempt groundwater uses (see definition), irrigation, municipal, industrial, power development, low temperature geothermal, mining, fish life, wildlife, recreation, pollution abatement, and artificial groundwater recharge; and (B) Groundwater from the basalt reservoir in a five-mile radius around any municipal well of the cities of Pendleton and Pilot Rock is classified for municipal, group domestic and statutorily exempt groundwater uses (see definition) only. Other uses may be permitted if it is documented that a barrier to groundwater movement separates a proposed well from municipal wells and there will be no interference with municipal wells. Applications for other uses of groundwater within a five-mile radius of a municipal well shall automatically be referred to the Commission for review and consideration of public interest unless the affected city affirms that it is in favor of the proposed appropriation. This classification applies only when the affected city(ies) have a full-time conservation program in effect.

(b) Permits issued to appropriate groundwaters that may be hydraulically connected with surface water shall be specially conditioned. The condition shall specify that when exercise of the permit unduly interferes with surface water, the permit will be regulated in favor of the surface water source.

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

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 26, f. 3-2-64; WRD 1-1981, f. & cert. ef. 4-20-81; WRD 10-1985, f. & cert. ef. 9-3-85; WRD 13, f. & cert. ef. 12-18-85; WRD 14-1985, f. & cert. ef. 12-20-85; WRD 1-1986, RF. & cert. ef. 2-20-86; WRD 1-1987, f. & cert. ef. 2-27-87; WRD 8-1988, f. & cert. ef. 7-5-88; WRD 9-1990, f. & cert. ef. 6-25-90; Administrative Renumbering 1-1993, Renumbered from 690-080-0070; WRD 2-2017, f. & cert. ef. 5-22-17

690-507-0070

Columbia-Umatilla Plateau Subbasin

(1) Objectives: In developing a program for the management, use and control of the surface and groundwater resources of the Columbia-Umatilla Plateau subbasin, the Commission has the following objectives:

(a) Protect instream values in the Umatilla River main stem by closing the main stem to future appropriations during the low-flow season and limiting future appropriations during the high-flow season to selected non-irrigation or nonconsumptive uses;

(b) Permit future surface water storage for any beneficial use;

(c) Permit artificial groundwater recharge to offset declining groundwater levels and supplement existing groundwater uses;

(d) Achieve a balance between groundwater pumpage and natural recharge in designated critical groundwater areas and groundwater study areas;

(e) Protect municipal groundwater supplies;

(f) Prevent new appropriations from causing groundwater/surface water interference.

(2) Surface Water: Appropriation and use of surface water in the Columbia-Umatilla Plateau subbasin shall comply with the following provisions:

(a) Umatilla River and tributaries are withdrawn from further appropriation of unappropriated waters during the period June 1 through October 31 each year. The withdrawal does not apply to domestic, livestock, fish and wildlife uses or water released from storage. This action was taken by the Commission on December 2, 1985;

(b) Classification: Permits to use surface water may be issued only for the following classified uses:

(A) Subject to the provisions of OAR 690-507-0050(2)(c)(B) and (C), the surface waters of the Umatilla River main stem are classified for domestic, livestock, irrigation of noncommercial lawn and garden not to exceed 1/2 acre, frost control, municipal, industrial, power development, mining, fish life, wildlife, recreation, pollution abatement, artificial groundwater recharge, and public instream uses during the period November 1 through May 31 each year. This classification rescinds the Commission's order of December 2, 1985, withdrawing the Umatilla River and tributaries from further appropriation from November 1 through May 31 each year until December 31, 1988;

(B) The surface waters of Umatilla River tributaries are classified for domestic, livestock, irrigation, frost control, power development (subject to the limitations of OAR Chapter 690, Division 51), mining, pollution abatement and artificial groundwater recharge during the period November 1 through May 31 each year; and

(C) The surface waters of all other streams are classified for domestic, livestock, irrigation, frost control, power development (subject to limitations of OAR Chapter 690, Division 51), mining and artificial groundwater recharge.

(c) Storage: Surface water legally stored during the period November 1 through May 31, and legally released may be used for any beneficial purpose;

(d) Artificial groundwater recharge: Use of surface water for groundwater recharge shall be subject to the following conditions:

(A) Recharged water used under a secondary permit for irrigation may only provide supplemental water to lands with existing irrigation rights or permits on June 24, 1988;

(B) Diversion of surface water for recharge for irrigation under a secondary permit shall not exceed 2.25 acre feet per acre to be irrigated; and

(C) If the recharged water is to be used for municipal or industrial purposes under a secondary permit, the applicant shall demonstrate to the satisfaction of the Commission that it has an active water conservation program.

(e) Minimum perennial streamflows: To support aquatic life in accordance with Section 3, Chapter 796, Oregon Laws 1983, no appropriation of water shall be made or granted by any state agency or public corporation of the state for waters of the Umatilla River and tributaries when flows are below the levels specified in Table 1. This limitation shall not apply to domestic and livestock use or to waters legally stored or released from storage; and with priority dates of 3-31-88.

(3) Groundwater: Appropriation and use of groundwater in the Columbia-Umatilla Plateau subbasin shall comply with the following provisions:

(a) Groundwater resources of the basalt aquifer and shallow gravel aquifer within the Ordinance Critical Groundwater Area are closed to further appropriation by Order of the Director dated April 2, 1976;

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(b) Groundwater resources of the basalt aquifer within the Butter Creek Critical Groundwater Area are closed to further appropriation by Order of the Director dated August 18, 1986;

(c) Groundwater resources of the basalt aquifer in the Stage Gulch Groundwater Study Area are closed to further appropriation by Proclamation of the Director dated January 31, 1985.

(d) Classification: Permits to use groundwater may be issued only for the following classified uses:

(A) The groundwater resources of the basalt aquifer in the Ella Butte Groundwater Study Area described in the Proclamation of January 31, 1985, are classified for statutorily exempt uses (see definition) only. This classification terminates the critical groundwater area determination proceeding initiated January 31, 1985, and the Proclamation of the same date issued for the Ella Butte study area;

(B) The groundwater resources of the Columbia-Umatilla Plateau outside the Ordinance and Butter Creek Critical Groundwater Areas and the Ella Butte and Stage Gulch Groundwater Study Areas are classified for statutorily exempt groundwater uses (see definition), irrigation, municipal, industrial, power development, low temperature geothermal, mining, fish life, wildlife, recreation, pollution abatement, and artificial groundwater recharge;

(C) Groundwater from the basalt reservoir in a five-mile radius around any municipal well of the cities of Heppner, Helix, Ione, Lexington, and Pendleton is classified for municipal, group domestic and statutorily exempt groundwater uses (see definition) only. Other uses may be permitted if it is documented that a barrier to groundwater movement separates a proposed well from municipal wells and there will be no interference with municipal wells. Applications for other uses of groundwater within a five-mile radius of a municipal well shall automatically be referred to the Commission for review and consideration of public interest unless the affected city affirms that it is in favor of the proposed appropriation. This classification applies only when the affected city(ies) have a full-time conservation program in effect;

(D) Subject to the more strict controls imposed by the existing State Gulch Proclamation or issuance of a critical area order for the Stage Gulch Groundwater Study Area, groundwater from the basalt reservoir in a five-mile radius around any municipal well of the cities of Echo, Hermiston, Pendleton, Stanfield, and Umatilla is classified for municipal, group domestic and statutorily exempt groundwater uses (see definition) only. Other uses may be permitted if it is documented that a barrier to groundwater movement separates a proposed well from municipal wells and there will be no interference with municipal wells. Applications for other uses of groundwater within a five-mile radius of a municipal well shall automatically be referred to the Commission for review and consideration of public interest unless the affected city affirms that it is in favor of the proposed appropriation. This classification applies only when the affected city(ies) have a full-time conservation program in effect.

(e) Permits issued to appropriate groundwaters that may be hydraulically connected with surface water shall be specially conditioned. The condition shall specify that when exercise of the permit unduly interferes with surface water, the permit will be regulated in favor of the surface water source.

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

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 26, f. 3-2-64; WRD 1-1981, f. & cert. ef. 4-20-81; WRD 10-1985, f. & cert. ef. 9-3-85; WRD 13, f. & cert. ef. 12-18-85; WRD 14-1985, f. & cert. ef. 12-20-85; WRD 1-1986, RF, & cert. ef. 2-20-86; WRD 1-1987, f. & cert. ef. 2-27-87; WRD 8-1988, f. & cert. ef. 7-5-88; WRD 9-1990, f. & cert. ef. 6-25-90; Administrative Renumbering 1-1993, Renumbered from 690-080-0070; WRD 2-2017, f. & cert. ef. 5-22-17

690-507-0080

Butter Creek Subbasin

(1) Objectives: In developing a program for the management, use and control of the surface and groundwater resources of the Butter Creek subbasin, the Commission has the following objectives:

(a) Protect instream values by closing streams to future appropriations during the low-flow season and limiting future appropriations during the high-flow season to selected nonirrigation uses;

(b) Preserve the opportunity for future upstream storage for all beneficial uses;

(c) Permit artificial groundwater recharge to offset declining groundwater levels and supplement existing groundwater uses;

(d) Achieve a balance between groundwater pumpage and natural recharge in designated critical groundwater areas and groundwater study areas;

(e) Prevent new appropriations from causing groundwater/surface water interference.

(2) Surface Water: Appropriation and use of surface water in the Butter Creek subbasin shall comply with the following provisions:

(a) Butter Creek and tributaries are withdrawn from further appropriation of unappropriated waters during the period June 1 through October 31 each year. The withdrawal does not apply to domestic, livestock, fish and wildlife uses or water released from storage. This action was taken by the Commission on December 2, 1985;

(b) Classification: Permits to use surface water may be issued only for the following classified uses:

(A) The surface waters of Butter Creek and tributaries are classified for domestic, livestock, irrigation of noncommercial lawn and garden not to exceed 1/2 acre, municipal, industrial, power development (subject to the limitations of OAR Chapter 690, Division 51) mining (including sand and gravel mining), fish life, wildlife, recreation, pollution abatement, artificial groundwater recharge, and public instream uses during the period November 1 through May 31 each year. This classification rescinds the Commission's order of December 2, 1985, withdrawing the Umatilla River and tributaries from further appropriation from November 1 through May 31 each year until December 31, 1988;

(B) Subject to the rights and priorities existing on June 24, 1988, the withdrawal of Butter Creek and tributaries from June 1 through October 31, Butter Creek and tributaries are further classified for all beneficial uses in conjunction with storage. All natural flow rights issued on Butter Creek and tributaries after this date shall be subordinate to this classification. Any storage project built under this classification shall include provisions for municipal, fish and wildlife, and recreation uses acceptable to the Commission.

(c) Storage: Surface water legally stored during the period November 1 through May 31, and legally released may be used for any beneficial purpose;

(d) Artificial groundwater recharge: Use of surface water for groundwater recharge shall be subject to the following conditions:

(A) Recharged water used under a secondary permit for irrigation may only provide supplemental water to lands with existing irrigation rights or permits on June 24, 1988;

(B) Diversion of surface water for recharge for irrigation under a secondary permit shall not exceed 2.25 acre feet per acre to be irrigated; and

(C) If the recharged water is to be used for municipal or industrial purposes under a secondary permit, the applicant shall demonstrate to the satisfaction of the Commission that it has an active water conservation program.

(3) Groundwater: Appropriation and use of groundwater in the Butter Creek subbasin shall comply with the following provisions:

(a) Groundwater resources of the basalt aquifer and shallow gravel aquifer within the Ordinance Critical Groundwater Area are closed to further appropriation by Order of the Director dated April 2, 1976;

(b) Groundwater resources of the basalt aquifer within the Butter Creek Critical Groundwater Area are closed to further appropriation by Order of the Director dated August 18, 1986;

(c) Classification: Permits to use groundwater may be issued only for the following classified uses:

(A) The groundwater resources of the Butter Creek subbasin outside the Ordinance and Butter Creek Critical Groundwater Areas are classified for statutorily exempt groundwater uses (see definition), irrigation, municipal, industrial, power development, low temperature geothermal, mining, fish life, wildlife, recreation, pollution abatement, and artificial groundwater recharge; and

(B) Groundwater from the basalt reservoir in a five-mile radius around any municipal well of the city of Heppner is classified for municipal, group domestic and statutorily exempt groundwater uses (see definition) only. Other uses may be permitted if it is documented that a barrier to groundwater movement separates a proposed well from municipal wells and there will be no interference with municipal wells. Applications for other uses of groundwater within a five-mile radius of a municipal well shall automatically be referred to the Commission for review and consideration of public interest unless the affected city affirms that it is in favor of the proposed appropriation. This classification applies only when the affected city(ies) have a full-time conservation program in effect.

(d) Permits issued to appropriate groundwaters that may be hydraulically connected with surface water shall be specially conditioned. The condition shall specify that when exercise of the permit unduly interferes with surface water, the permit will be regulated in favor of the surface water source.

Stat. Auth.: ORS 536 & 537

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Stats. Implemented:

Hist.: WRB 26, f. 3-2-64; WRD 1-1981, f. & cert. ef. 4-20-81; WRD 10-1985, f. & cert. ef. 9-3-85; WRD 13, f. & cert. ef. 12-18-85; WRD 14-1985, f. & cert. ef. 12-20-85; WRD 1-1986, RF. & cert. ef. 2-20-86; WRD 1-1987, f. & cert. ef. 2-27-87; WRD 8-1988, f. & cert. ef. 7-5-88; WRD 9-1990, f. & cert. ef. 6-25-90; Administrative Renumbering 1-1993, Renumbered from 690-080-0070; WRD 2-2017, f. & cert. ef. 5-22-17

690-507-0090

Willow Creek Subbasin

(1) Objectives: In developing a program for the management, use and control of the surface and groundwater resources of the Willow Creek subbasin, the Commission has the following objectives:

(a) Protect instream values by limiting future appropriations to selected nonirrigation or nonconsumptive uses;

(b) Preserve the opportunity for future upstream storage for all beneficial uses;

(c) Permit artificial groundwater recharge to offset declining groundwater levels and supplement existing groundwater uses;

(d) Achieve a balance between groundwater pumpage and natural recharge in designated critical groundwater areas and groundwater study areas;

(e) Protect municipal groundwater supplies;

(f) Prevent new appropriations from causing groundwater/ surface water interference.

(2) Surface Water: Appropriation and use of surface water in the Willow Creek subbasin shall comply with the following provisions:

(a) Classification: Permits to use surface water may be issued only for the following classified uses:

(A) The surface waters of Willow Creek and tributaries are classified for domestic, livestock, irrigation of noncommercial lawn and garden not to exceed 1/2 acre, municipal, industrial, power development (subject to the limitations of OAR Chapter 690, Division 51) mining (including sand and gravel mining), fish life, wildlife, recreation, pollution abatement, artificial groundwater recharge, and public instream uses; and

(B) Subject to the rights and priorities existing on June 24, 1988, Willow Creek and tributaries are further classified for all beneficial uses in conjunction with storage. All natural flow rights issued on Willow Creek and tributaries after this date shall be subordinate to this classification. Any storage project built under this classification shall include provisions for municipal, fish and wildlife, and recreation uses acceptable to the Commission.

(b) Storage: Surface water legally stored and legally released, may be used for any beneficial purpose;

(c) Artificial groundwater recharge: Use of surface water for groundwater recharge shall be subject to the following conditions:

(A) Recharged water used under a secondary permit for irrigation may only provide supplemental water to lands with existing irrigation rights or permits on June 24, 1988;

(B) Diversion of surface water for recharge for irrigation under a secondary permit shall not exceed 2.25 acre feet per acre to be irrigated; and

(C) If the recharged water is to be used for municipal or industrial purposes under a secondary permit, the applicant shall demonstrate to the satisfaction of the Commission that it has an active water conservation program.

(3) Groundwater: Appropriation and use of groundwater in the Willow Creek subbasin shall comply with the following provisions:

(a) Groundwater resources of the basalt aquifer within the Butter Creek Critical Groundwater Area are closed to further appropriation by Order of the Director dated August 18, 1986;

(b) Classification: Permits to use groundwater may be issued only for the following classified uses:

(A) The groundwater resources of the basalt aquifer in the Ella Butte Groundwater Study Area as described in the Proclamation of January 31, 1985, are classified for statutorily exempt uses (see definition) only. This classification terminates the critical groundwater determination proceeding initiated January 31, 1985, and the Proclamation of the same date issued for the Ella Butte study area;

(B) The groundwater resources of the Willow Creek subbasin outside the Butter Creek Critical Groundwater Area and the Ella Butte Groundwater Study Area are classified for statutorily exempt groundwater uses (see definition), irrigation, municipal, industrial, power development, low temperature geothermal, mining, fish life, wildlife, recreation, pollution abatement, and artificial groundwater recharge; and

(C) Groundwater from the basalt reservoir in a five-mile radius around any municipal well of the cities of Heppner, Ione and Lexington is classified for municipal, group domestic and statutorily exempt groundwater uses (see definition) only. Other uses may be permitted if it is docu-

mented that a barrier to groundwater movement separates a proposed well from municipal wells and there will be no interference with municipal wells. Applications for other uses of groundwater within a five-mile radius of a municipal well shall automatically be referred to the Commission for review and consideration of public interest unless the affected city affirms that it is in favor of the proposed appropriation. This classification applies only when the affected city(ies) have a full-time conservation program in effect.

(c) Permits issued to appropriate groundwaters that may be hydraulically connected with surface water shall be specially conditioned. The condition shall specify that when exercise of the permit unduly interferes with surface water, the permit will be regulated in favor of the surface water source.

Stat. Auth.: ORS 536 & 537

Stats. Implemented:

Hist.: WRB 26, f. 3-2-64; WRD 1-1981, f. & cert. ef. 4-20-81; WRD 10-1985, f. & cert. ef. 9-3-85; WRD 13, f. & cert. ef. 12-18-85; WRD 14-1985, f. & cert. ef. 12-20-85; WRD 1-1986, RF. & cert. ef. 2-20-86; WRD 1-1987, f. & cert. ef. 2-27-87; WRD 8-1988, f. & cert. ef. 7-5-88; WRD 9-1990, f. & cert. ef. 6-25-90; Administrative Renumbering 1-1993, Renumbered from 690-080-0070; WRD 2-2017, f. & cert. ef. 5-22-17

690-507-0610

Butter Creek Critical Groundwater Area (CGWA): Purpose

(1) The Director issued an order on August 18, 1986 declaring the Butter Creek Critical Groundwater Area. The order described the exterior boundaries and divided the area into six subareas for the purpose of managing the ground-water resource. The response of ground-water levels to pumpage from each subarea is largely independent of pumpage within other subareas.

(2) To promote optimum use of the limited groundwater supply in the Butter Creek Critical Groundwater Area, the Commission encourages development of water management plans to maintain a high standard of water use efficiency.

(3) The Commission recognizes that exempt users in the North subarea are a stress on the groundwater resource in the Butter Creek Critical Groundwater Area. If, by 2000, reasonably stable water levels have not been achieved, the Department shall determine whether or not to require prior authorization under these rules for groundwater uses that are exempt under ORS 537.545.

(4) The purpose of these rules is to stabilize water levels in the basalt groundwater reservoir in the Butter Creek Critical Groundwater Area of Umatilla and Morrow counties. These rules carry out the authority granted to the Commission in ORS 536.900 to 536.935 and ORS 537.505 to 537.745.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 537.535

Hist.: WRD 9-1990, f. & cert. ef. 6-25-90; WRD 2-1999, f. & cert. ef. 3-3-99; WRD 2-2017, f. & cert. ef. 5-22-17

690-507-0620

Butter Creek CGWA: Definitions

The following definitions apply to OAR Chapter 690, Division 507:

(1) "Commission" means the Water Resources Commission.

(2) "Department" means the Water Resources Department.

(3) "Director" means the Director of the Water Resources Department.

(4) "Physically capable" means that the well, pump installed, and distribution system are able to produce and distribute the quantity of water requested.

(5) "Reasonably stable water level" means an annual static water level decline of less than one foot over the entire subarea as determined by averaging the annual water level change of the representative wells in the subarea, and the water level change for the subarea averaged over five consecutive years displays no decline.

(6) "Sustainable annual yield" means the volume of water that can be pumped on an annual basis while maintaining reasonably stable water levels. This is a measurement of the capacity of the available source.

(7) "Water user" means a person who pumps water from the basalt groundwater reservoir.

Stat. Auth.: ORS 536 & 537

Stats. Implemented: ORS 537.535

Hist.: WRD 9-1990, f. & cert. ef. 6-25-90; WRD 2-1999, f. & cert. ef. 3-3-99; WRD 2-2017, f. & cert. ef. 5-22-17

690-507-0630

Butter Creek CGWA: General Requirements

(1) Except as specified in OAR 690-507-0650(3) and 690-507-0670(7), the use of water from the basalt groundwater reservoir within the

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Butter Creek Critical Groundwater Area shall be limited to the sustainable annual yield.

(2) The Commission delegates to the Director the authority to implement these rules.

(3) Water from the basalt groundwater reservoir in the Butter Creek Critical Groundwater Area shall be used for irrigation only during the irrigation season. The irrigation season begins on the 15th of March and ends on the 1st of November.

(4) The Department shall not accept any new applications for appropriation of water from the basalt groundwater reservoir within the Butter Creek Critical Area.

Stat. Auth.: ORS 537.515, 537.525, 537.545 & 537.730 - 537.745
Stats. Implemented: ORS 537.535
Hist.: WRD 9-1990, f. & cert. ef. 6-25-90; WRD 3-1992, f. & cert. ef. 2-10-92; WRD 7-1992, f. & cert. ef. 5-14-92; WRD 2-1999, f. & cert. ef. 3-3-99; WRD 2-2017, f. & cert. ef. 5-22-17

690-507-0635

Butter Creek CGWA: Water Users Exempt from Division Requirements

Any school located in the Butter Creek Critical Groundwater Area using water from the basalt reservoir for watering lawns, grounds and fields not exceeding ten acres in area shall meet the requirements of OAR 690-507-0640(2) to (5) and 690-507-0645. All other water users exempt under the provisions of ORS 537.545(a), (b), (d), (e), and (f) are not subject to the provisions of OAR 690, Division 507.

Stat. Auth.: ORS 536 & 537
Stats. Implemented: ORS 537.535
Hist.: WRD 9-1990, f. & cert. ef. 6-25-90; WRD 2-1999, f. & cert. ef. 3-3-99; WRD 2-2017, f. & cert. ef. 5-22-17

690-507-0640

Butter Creek CGWA: Duties of Water Users

(1) Appropriation of groundwater from the Butter Creek Critical Groundwater Area is prohibited unless the water user meets the requirements of section (2) to (5) of this rule.

(2) A water user authorized by OAR 690-507-0670 to pump water from the basalt groundwater reservoir shall satisfy the following conditions:

(a) Wells shall have an access port with a minimum diameter of 3/4 inch. The access shall be adequate to determine the water level at any time.

(b) A water user may install a functioning airline with a pressure gauge in addition to the access port. The airline shall be calibrated and yield accurate data. The airline shall not enter the well through the access port. The airline shall be adequate to determine the water level at any time.

(c) A water user shall install and maintain a totalizing flow meter on each well authorized by OAR 690-507-0670. The meter shall meet the requirements of OAR 690-507-0645.

(3) A water user shall record flow meter and power meter readings on a weekly basis at times when water is being used. The water user shall use forms provided by the Department and shall mail the readings to the Department in Salem by December 1st of the same year.

(4) A water user shall report broken flow meters to the watermaster in Pendleton within 48 hours after determining that the flow meter is broken. A water user shall not appropriate for more than 30 days without an operating flow meter. While the flow meter is broken, the water user shall record daily the hours the pump operates, the power meter reading and the time the power meter was read. The water user shall mail the data to the Department in Salem within one week of the installation of the repaired or replacement flow meter. The data shall include a statement of the initial reading on the newly installed flow meter and the current power meter reading. The water user shall notify the watermaster within 48 hours of installing the repaired or replacement flow meter.

(5) A water user shall notify the Department prior to commencing any repair or modification work on a pump or well. A water user shall mail a description of the repair or modification work to the Department within ten days of the completion of the repair or modification.

Stat. Auth.: ORS 536 & 537
Stats. Implemented: ORS 537.535
Hist.: WRD 9-1990, f. & cert. ef. 6-25-90; WRD 2-1999, f. & cert. ef. 3-3-99; WRD 2-2017, f. & cert. ef. 5-22-17

690-507-0647

Butter Creek CGWA: New Subarea Boundaries

(1) The Echo Junction Subarea shall be divided into two separate subareas being the Fourmile Canyon Subarea and the Echo Junction Subarea with boundaries as prescribed in sections a and b of this rule:

(a) Echo Junction Subarea: Beginning at a point approximately 3,290 feet east of the northwest corner of Section 3, Township 3 North, Range 28

East, WILLAMETTE MERIDIAN; thence southerly through Emigrant Buttes in the east half of Section 3, Township 3 North, Range 28 East, WILLAMETTE MERIDIAN; thence southerly through the center of Section 22, Township 3 North, Range 28 East, WILLAMETTE MERIDIAN; and continuing southerly towards Service Buttes to a point approximately 750 feet east of the southwest corner of Section 10, Township 2 North, Range 28 East, WILLAMETTE MERIDIAN; thence west to the southwest corner of Section 10, Township 2 North, Range 28 East, WILLAMETTE MERIDIAN; thence southwest along a straight line to the southwest corner, northwest quarter southwest quarter, Section 22, Township 2 North, Range 27 East, WILLAMETTE MERIDIAN; thence north along the west line of said Section 22 to the west quarter corner of Section 22, Township 2 North, Range 27 East, WILLAMETTE MERIDIAN; thence northeast along a straight line to the southwest corner, northwest quarter southwest quarter, Section 19, Township 3 North, Range 28 East, WILLAMETTE MERIDIAN; thence north along the Range line common to Range 27 East and Range 28 East to the northwest corner of Township 3 North, Range 28 East, WILLAMETTE MERIDIAN; thence east along the Township line to a point approximately 3,290 feet east of the northwest corner of Section 3, Township 3 North, Range 28 East, WILLAMETTE MERIDIAN; the point of beginning.

(b) Fourmile Canyon Subarea: Beginning at the southwest corner, northwest quarter southwest quarter, Section 22, Township 2 North, Range 27 East, WILLAMETTE MERIDIAN; thence southwest along a straight line to the southwest corner of Section 21, Township 2 North, Range 27 East, WILLAMETTE MERIDIAN; thence northwest along a straight line to the northwest corner of Section 1, Township 2 North, Range 26 East, WILLAMETTE MERIDIAN; thence east along the Township line common to Township 2 North and Township 3 North, to the southwest corner of Section 35, Township 3 North, Range 27 East, WILLAMETTE MERIDIAN; thence northeast along a straight line to the southwest corner of Section 6, Township 3 North, Range 28 East, WILLAMETTE MERIDIAN; thence south along the Range line common to Range 27 East and Range 28 East to the southwest corner, northwest quarter southwest quarter, Section 19, Township 3 North, Range 28 East, WILLAMETTE MERIDIAN; thence southwest along a straight line to the west quarter corner of Section 22, Township 2 North, Range 27 East, WILLAMETTE MERIDIAN; thence south to the southwest corner, northwest quarter southwest quarter, Section 22, Township 2 North, Range 27 East, WILLAMETTE MERIDIAN; the point of beginning.

(2) The North Subarea shall be divided into two separate subareas being the "North Subarea" and "Section 21" with boundaries as prescribed in sections (a) and (b) of this rule:

(a) North Subarea: Being the basalt aquifer underlying the following area; beginning at the center of Section 9, Township 5 North, Range 28 East, WILLAMETTE MERIDIAN, at the Columbia River; thence southerly through Umatilla Butte in the east half of Section 28, Township 5 North, Range 28 East, WILLAMETTE MERIDIAN; thence continuing southerly through Hermiston Butte within the northeast quarter of the northwest quarter, Section 10, Township 4 North, Range 28 East, WILLAMETTE MERIDIAN and continuing southerly towards Emigrant buttes in the east half of Section 3, Township 3 North, Range 28 East, WILLAMETTE MERIDIAN, to a point on the Township line common to Township 3 North and Township 4 North, Range 28 East, WILLAMETTE MERIDIAN; thence westerly along the Township line common to Township 3 North and Township 4 North, to the Southwest corner of Township 4 North, Range 28 East, WILLAMETTE MERIDIAN; thence northerly along the west boundary line of Range 28 East to the Northwest corner of Township 4 North, Range 28 East, WILLAMETTE MERIDIAN; thence easterly along the Township line to the southwest corner of Section 31, Township 5 North, Range 28 East, WILLAMETTE MERIDIAN; thence north along the west boundary line of Range 28 East to the Columbia River; thence easterly along the south edge of the Columbia River to the point of beginning, excepting therefrom the following:

(b) Section 21: Being the basalt aquifer underlying the following area above 100 feet in elevation above mean sea level, described as follows: beginning at a point 1725 feet west of the northeast corner of Section 21, Township 5 North, Range 28 East, WILLAMETTE MERIDIAN on the section line common to Section 16 and Section 21, Township 5 North, Range 28 East, WILLAMETTE MERIDIAN; thence southerly to a point 1100 feet west of the southeast corner of Section 21, Township 5 North, Range 28 East, WILLAMETTE MERIDIAN on the section line common to Section 21 and Section 28, Township 5 North, Range 28 East, WILLAMETTE MERIDIAN; thence westerly along the section line common to Section 21 and Section 28, Township 5 North, Range 28 East,

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WILLAMETTE MERIDIAN to the southwest corner of Section 21, Township 5 North, Range 28 East, WILLAMETTE MERIDIAN; thence northerly along the section line common to Section 20 and Section 21, Township 5 North, Range 28 East, WILLAMETTE MERIDIAN to the northwest corner of Section 21, Township 5 North, Range 28 East, WILLAMETTE MERIDIAN; thence easterly along the section line common to Section 16 and Section 21, Township 5 North, Range 28 East, WILLAMETTE MERIDIAN to the point of the beginning., all that portion of Section 21, Township 5 North, Range 28 East, WILLAMETTE MERIDIAN within the North Subarea.

Stat. Auth.: ORS 537.515, 537.525, 537.545 & 537.730 - 537.745
Stats. Implemented: ORS 537.535
Hist.: WRD 3-1992, f. & cert. ef. 2-10-92; WRD 2-1999, f. & cert. ef. 3-3-99; WRD 2-2017, f. & cert. ef. 5-22-17

690-507-0650

Butter Creek CGWA: Sustainable Annual Yield

(1) Each of the eight subareas in the Butter Creek Critical Groundwater Area shall be managed according to the sustainable annual yield within that subarea. The Department shall refine the sustainable annual yield value over time through the use of pumpage data and the response of groundwater levels.

(2) The initial sustainable annual yield for each of the eight subareas was calculated using data from the 1983 through the 1989 irrigation seasons and is listed below by subarea followed by the Sustainable Annual Yield in Acre Feet:

- (a) North, 250 Acre Feet;
- (b) Section 21, 28 Acre Feet;
- (c) Echo Junction, 1,260 Acre Feet;
- (d) Fourmile Canyon, 1,300 Acre Feet;
- (e) West, 5,670 Acre Feet;
- (f) East, 720 Acre Feet;
- (g) Pine City, 4,150 Acre Feet;
- (h) South, 1,000 Acre Feet.

Stat. Auth.: ORS 537.515, 537.525, 537.545 & 537.730 - 537.745
Stats. Implemented: ORS 537.535
Hist.: WRD 9-1990, f. & cert. ef. 6-25-90; WRD 3-1992, f. & cert. ef. 2-10-92; WRD 7-1992, f. & cert. ef. 5-14-92; WRD 2-1999, f. & cert. ef. 3-3-99; WRD 2-2017, f. & cert. ef. 5-22-17

690-507-0660

Butter Creek CGWA: Method for Determining the Sustainable Annual Yield

(1) The Department shall determine the sustainable annual yield for each subarea by comparing the volume of groundwater pumped annually from each subarea for a given year to the average of the annual changes in groundwater levels for the subarea for the same year.

(a) The Department shall calculate pumpage from each well based on data collected by the Department and as submitted under OAR 690-507-0640. The pumpage for each subarea shall be calculated by totaling the pumpage from each non-exempt well in the subarea.

(b) The Department shall calculate annual change in groundwater levels for a subarea by subtracting the current year's February or March water level from the previous year's February or March water level. The average shall be calculated by adding the change at each well in the subarea and dividing by the number of wells with available water level data. Data from all permitted or certificated wells in each subarea that are measurable shall be used to calculate the average annual change. If water level data cannot be collected at a particular well, data from a nearby well may be substituted.

(2) The total volume of groundwater pumped from each subarea for a given year shall be plotted against the average change in groundwater levels from that subarea for that year.

(3) A line of regression is drawn through the data using the least squares fit method and extended through the zero decline axis.

Stat. Auth.: ORS 536 & 537
Stats. Implemented: ORS 537.535
Hist.: WRD 9-1990, f. & cert. ef. 6-25-90; WRD 2-1999, f. & cert. ef. 3-3-99; WRD 2-2017, f. & cert. ef. 5-22-17

690-507-0670

Butter Creek CGWA: Distribution of Sustainable Annual Yield

(1) The method for distributing the sustainable annual yield from the basalt groundwater reservoir within each subarea in the Butter Creek Critical Groundwater Area is as follows:

(a) Except as provided in sections (5) of this rule, a water user who intends to pump water during any year shall make a request to the Department in Salem by July 1st of the preceding year on forms provided by the Department.

(b) The distribution of groundwater shall be based on the priority dates of the water rights within the individual subarea.

(c) In determining the amount of groundwater each water user is allocated to pump during the next calendar year or irrigation season, the Department may consider:

- (A) Request for allocations received;
- (B) The sustainable annual yield;
- (C) The limits of the groundwater rights;
- (D) The relative dates of priority;
- (E) Historical usage;
- (F) Whether or not a water user is physically capable of pumping and putting to a beneficial use the quantity requested; and
- (G) Any other factors deemed appropriate by the Department.

(d) The Department shall notify, by certified mail with return receipt requested, each water user by August 1st of the amount of groundwater allocated under these rules to each water user for the next calendar year or irrigation season.

(2) If pumpage for a particular year exceeds the sustainable annual yield for a subarea, the total subarea allocation for the second year after that occurrence shall be reduced by that volume.

(3) If any water user requests more water than has been historically used, the Department may allocate less water than requested if, upon investigation, it appears unlikely the user will pump the volume requested.

(4) If any water user requests less water than has been historically used, the Department may allocate more water than requested if, upon investigation, it appears likely that the user will pump more than the volume requested.

(5) The method of requesting and distributing water in section (1) of this rule may not apply if a voluntary agreement among groundwater users in any subarea is reached. The Director may approve the agreement if it is consistent with ORS 537.730 to 537.740 and the requirements of these rules (division 507). The Department shall be a party to any agreement reached.

(6) Any agreement approved by the Director may be terminated by the lapse of time as provided in the agreement, by consent of the parties to the agreement or by the Director if the Director finds, after investigation and a public hearing upon adequate notice, that:

(a) The agreement is not being substantially complied with by the parties thereto;

(b) Changed conditions have made the continuance of the agreement a detriment to the public welfare, safety and health or contrary in any particular to the intent, purposes and requirements of ORS 537.505 to 537.795 or OAR chapter 690, division 507; or

(c) That the agreement is ineffective in achieving reasonably stable water levels.

Stat. Auth.: ORS 537.515, 537.525, 537.545 & 537.730 - 537.745
Stats. Implemented: ORS 537.535
Hist.: WRD 9-1990, f. & cert. ef. 6-25-90; WRD 3-1992, f. & cert. ef. 2-10-92; WRD 7-1992, f. & cert. ef. 5-14-92; WRD 2-1999, f. & cert. ef. 3-3-99; WRD 2-2017, f. & cert. ef. 5-22-17

690-507-0680

Butter Creek (CGWA) Process of Periodic Review of Sustainable Annual Yield

(1) The Department shall determine whether a reasonably stable water level was achieved in the basalt groundwater reservoir in each subarea in 2000 and every five years thereafter.

(2) For any subarea in which a reasonably stable water level was achieved, the Department may increase the sustainable annual yield if the evaluation under section (1) of this rule indicates that more water is available than the existing sustainable annual yield.

(3) For any subarea in which a reasonably stable water level was not achieved, the Department may decrease the sustainable annual yield or modify subarea boundaries, or both, if the evaluation under section (1) of this rule indicates that less water is available than the existing sustainable annual yield.

(4) For any subarea in which a reasonably stable water level was achieved but for which individual wells, in the Director's judgment, show significant water level declines, the Department may propose modification of subarea boundaries.

(5) If the Department proposes to modify sustainable annual yields or subarea boundaries, it shall conduct a rulemaking hearing as part of the basin program.

(6) The Department may propose modification of subarea boundaries at times other than the five year review required in section (1) of this rule.

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(7) Individuals with a groundwater right in the Butter Creek Critical Groundwater Area may petition the Department to modify subarea boundaries under the following conditions:

- (a) The petition shall be in writing;
 - (b) The petition shall contain evidence in support of the proposed boundary change; and
 - (c) The petition shall specify the proposed location of the boundary.
- Stat. Auth.: ORS 536 & 537
Stats. Implemented: ORS 537.535
Hist.: WRD 9-1990, f. & cert. ef. 6-25-90; WRD 2-1999, f. & cert. ef. 3-3-99; WRD 2-2017, f. & cert. ef. 5-22-17

690-507-0690

Butter Creek (CGWA) Annual Reporting

The Department shall publish a report for the Butter Creek Critical Groundwater Area by May 31 of each year. The report shall include the water user's name, well locations, permit numbers, priority dates, authorized diversions, actual diversion and water levels.

Stat. Auth.: ORS 536 & 537
Stats. Implemented: ORS 537.535
Hist.: WRD 9-1990, f. & cert. ef. 6-25-90; WRD 2-1999, f. & cert. ef. 3-3-99; WRD 2-2017, f. & cert. ef. 5-22-17

690-507-0790

Stage Gulch CGWA: Sustainable Annual Yield

(1) Each of the subareas in the Stage Gulch Critical Ground-water Area shall be managed according to the sustainable annual yield within that subarea. The Department shall refine the sustainable annual yield over time through the use of pumpage data and the response of ground-water levels.

(2) The initial sustainable annual yield for each of the seven managed subareas in the Stage Gulch Critical Groundwater Area was determined using data from the 1980 through the 1989 irrigation season and is listed below:

SUBAREA — SUSTAINABLE ANNUAL YIELD

A — 11,450 Acre Feet

B — 200 Acre Feet

C — 400 Acre Feet

D — 3,250 Acre Feet

F — 200 Acre Feet

G — 2,750 Acre Feet

H — 8,850 Acre Feet

Stat. Auth.: ORS 536.900 - 536.935 & 537.505 - 537.745

Stats. Implemented:

Hist.: WRD 6-1991, f. & cert. ef. 6-14-91; WRD 2-2017, f. & cert. ef. 5-22-17

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101-015-0011	6-8-2017	Amend(T)	7-1-2017	123-093-0900	2-22-2017	Adopt	4-1-2017
104-055-0000	1-27-2017	Adopt	3-1-2017	123-093-1000	2-22-2017	Adopt	4-1-2017
104-055-0010	1-27-2017	Adopt	3-1-2017	125-140-0010	5-10-2017	Amend(T)	6-1-2017
104-055-0020	1-27-2017	Adopt	3-1-2017	125-140-0020	5-10-2017	Amend(T)	6-1-2017
104-055-0030	1-27-2017	Adopt	3-1-2017	125-246-0100	1-1-2017	Amend	2-1-2017
104-055-0040	1-27-2017	Adopt	3-1-2017	125-246-0110	1-1-2017	Amend	2-1-2017
104-055-0050	1-27-2017	Adopt	3-1-2017	125-246-0135	1-1-2017	Amend	2-1-2017
104-055-0060	1-27-2017	Adopt	3-1-2017	125-246-0140	1-1-2017	Amend	2-1-2017
104-055-0070	1-27-2017	Adopt	3-1-2017	125-246-0165	1-1-2017	Amend	2-1-2017
104-055-0080	1-27-2017	Adopt	3-1-2017	125-246-0170	1-1-2017	Amend	2-1-2017
104-055-0090	1-27-2017	Adopt	3-1-2017	125-246-0200	1-1-2017	Amend	2-1-2017
104-055-0100	1-27-2017	Adopt	3-1-2017	125-246-0210	1-1-2017	Amend	2-1-2017
111-010-0015	3-16-2017	Amend	5-1-2017	125-246-0220	1-1-2017	Amend	2-1-2017
111-010-0015(T)	3-16-2017	Repeal	5-1-2017	125-246-0350	1-1-2017	Amend	2-1-2017
111-030-0010	3-16-2017	Amend	5-1-2017	125-246-0360	1-1-2017	Amend	2-1-2017
111-030-0010(T)	3-16-2017	Repeal	5-1-2017	125-246-0555	1-1-2017	Amend	2-1-2017
111-030-0035	3-16-2017	Amend	5-1-2017	125-246-0570	1-1-2017	Amend	2-1-2017
111-030-0035(T)	3-16-2017	Repeal	5-1-2017	125-247-0110	1-1-2017	Amend	2-1-2017
111-030-0040	3-16-2017	Amend	5-1-2017	125-247-0185	1-1-2017	Amend	2-1-2017
111-030-0040(T)	3-16-2017	Repeal	5-1-2017	125-247-0275	1-1-2017	Amend	2-1-2017
111-030-0045	3-16-2017	Amend	5-1-2017	125-247-0287	1-1-2017	Amend	2-1-2017
111-030-0045(T)	3-16-2017	Repeal	5-1-2017	125-247-0288	1-1-2017	Amend	2-1-2017
111-030-0046	3-16-2017	Amend	5-1-2017	125-247-0305	1-1-2017	Amend	2-1-2017
111-030-0046(T)	3-16-2017	Repeal	5-1-2017	125-247-0550	1-1-2017	Amend	2-1-2017
111-030-0047	3-16-2017	Amend	5-1-2017	125-247-0691	1-1-2017	Amend	2-1-2017
111-030-0047(T)	3-16-2017	Repeal	5-1-2017	137-050-0745	3-29-2017	Amend	5-1-2017
111-030-0050	3-16-2017	Amend	5-1-2017	137-055-3080	6-14-2017	Amend(T)	7-1-2017
111-030-0050(T)	3-16-2017	Repeal	5-1-2017	137-055-3220	3-29-2017	Amend	5-1-2017
111-070-0001	3-16-2017	Amend	5-1-2017	137-076-0000	4-27-2017	Amend	6-1-2017
111-070-0001(T)	3-16-2017	Repeal	5-1-2017	137-076-0005	4-27-2017	Amend	6-1-2017
111-070-0005	3-16-2017	Amend	5-1-2017	137-076-0010	4-27-2017	Amend	6-1-2017
111-070-0005(T)	3-16-2017	Repeal	5-1-2017	137-076-0016	4-27-2017	Amend	6-1-2017
111-070-0015	3-16-2017	Amend	5-1-2017	137-076-0017	4-27-2017	Adopt	6-1-2017
111-070-0015(T)	3-16-2017	Repeal	5-1-2017	137-076-0018	4-27-2017	Repeal	6-1-2017
111-070-0020	3-16-2017	Amend	5-1-2017	137-076-0019	4-27-2017	Adopt	6-1-2017
111-070-0020(T)	3-16-2017	Repeal	5-1-2017	137-076-0020	4-27-2017	Amend	6-1-2017
111-070-0040	3-16-2017	Amend	5-1-2017	137-076-0025	4-27-2017	Amend	6-1-2017
111-070-0040(T)	3-16-2017	Repeal	5-1-2017	137-076-0030	4-27-2017	Amend	6-1-2017
111-070-0050	3-16-2017	Amend	5-1-2017	137-076-0032	4-27-2017	Amend	6-1-2017
111-070-0050(T)	3-16-2017	Repeal	5-1-2017	137-076-0034	4-27-2017	Amend	6-1-2017
123-061-0010	12-22-2016	Amend	2-1-2017	137-076-0037	4-27-2017	Amend	6-1-2017
123-061-0020	12-22-2016	Amend	2-1-2017	137-076-0040	4-27-2017	Amend	6-1-2017
123-061-0030	12-22-2016	Amend	2-1-2017	137-076-0043	4-27-2017	Amend	6-1-2017
123-061-0031	12-22-2016	Adopt	2-1-2017	137-076-0045	4-27-2017	Amend	6-1-2017
123-061-0032	12-22-2016	Adopt	2-1-2017	137-076-0050	4-27-2017	Repeal	6-1-2017
123-061-0033	12-22-2016	Adopt	2-1-2017	137-076-0055	4-27-2017	Amend	6-1-2017
123-061-0035	12-22-2016	Amend	2-1-2017	137-076-0056	4-27-2017	Amend	6-1-2017
123-061-0040	12-22-2016	Repeal	2-1-2017	137-076-0060	4-27-2017	Repeal	6-1-2017
123-093-0100	2-22-2017	Adopt	4-1-2017	137-076-0065	4-27-2017	Amend	6-1-2017
123-093-0200	2-22-2017	Adopt	4-1-2017	137-076-0070	4-27-2017	Amend	6-1-2017
123-093-0300	2-22-2017	Adopt	4-1-2017	137-080-0005	4-27-2017	Amend	6-1-2017
123-093-0400	2-22-2017	Adopt	4-1-2017	137-080-0010	4-27-2017	Amend	6-1-2017
123-093-0500	2-22-2017	Adopt	4-1-2017	137-080-0015	4-27-2017	Amend	6-1-2017
123-093-0600	2-22-2017	Adopt	4-1-2017	137-080-0020	4-27-2017	Repeal	6-1-2017
123-093-0700	2-22-2017	Adopt	4-1-2017	137-080-0025	4-27-2017	Amend	6-1-2017
123-093-0800	2-22-2017	Adopt	4-1-2017	137-080-0030	4-27-2017	Amend	6-1-2017

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137-105-0001	11-17-2016	Amend	1-1-2017	141-075-0175	1-12-2017	Repeal	2-1-2017
137-105-0010	11-17-2016	Amend	1-1-2017	141-075-0180	1-12-2017	Repeal	2-1-2017
137-105-0020	11-17-2016	Amend	1-1-2017	141-075-0190	1-12-2017	Repeal	2-1-2017
137-105-0025	11-17-2016	Adopt	1-1-2017	141-075-0195	1-12-2017	Repeal	2-1-2017
137-105-0030	11-17-2016	Amend	1-1-2017	141-075-0200	1-12-2017	Repeal	2-1-2017
137-106-0001	11-17-2016	Adopt	1-1-2017	141-075-0205	1-12-2017	Repeal	2-1-2017
137-106-0010	11-17-2016	Adopt	1-1-2017	141-075-0210	1-12-2017	Repeal	2-1-2017
137-106-0030	11-17-2016	Adopt	1-1-2017	141-075-0215	1-12-2017	Repeal	2-1-2017
137-106-0040	11-17-2016	Adopt	1-1-2017	141-075-0220	1-12-2017	Repeal	2-1-2017
141-067-0130	1-12-2017	Amend	2-1-2017	141-075-0225	1-12-2017	Repeal	2-1-2017
141-067-0150	1-12-2017	Amend	2-1-2017	141-075-0230	1-12-2017	Repeal	2-1-2017
141-067-0155	1-12-2017	Amend	2-1-2017	141-075-0235	1-12-2017	Repeal	2-1-2017
141-067-0170	1-12-2017	Amend	2-1-2017	141-075-0240	1-12-2017	Repeal	2-1-2017
141-067-0180	1-12-2017	Amend	2-1-2017	141-075-0245	1-12-2017	Repeal	2-1-2017
141-067-0195	1-12-2017	Amend	2-1-2017	141-075-0250	1-12-2017	Repeal	2-1-2017
141-067-0200	1-12-2017	Repeal	2-1-2017	141-075-0255	1-12-2017	Repeal	2-1-2017
141-067-0215	1-12-2017	Amend	2-1-2017	141-075-0260	1-12-2017	Repeal	2-1-2017
141-067-0220	1-12-2017	Amend	2-1-2017	141-075-0265	1-12-2017	Repeal	2-1-2017
141-067-0270	1-12-2017	Amend	2-1-2017	141-075-0270	1-12-2017	Repeal	2-1-2017
141-067-0300	1-12-2017	Amend	2-1-2017	141-075-0275	1-12-2017	Repeal	2-1-2017
141-068-0000	1-12-2017	Adopt	2-1-2017	141-075-0280	1-12-2017	Repeal	2-1-2017
141-068-0010	1-12-2017	Adopt	2-1-2017	141-075-0285	1-12-2017	Repeal	2-1-2017
141-068-0020	1-12-2017	Adopt	2-1-2017	141-075-0290	1-12-2017	Repeal	2-1-2017
141-068-0030	1-12-2017	Adopt	2-1-2017	141-075-0295	1-12-2017	Repeal	2-1-2017
141-068-0040	1-12-2017	Adopt	2-1-2017	141-075-0300	1-12-2017	Repeal	2-1-2017
141-068-0050	1-12-2017	Adopt	2-1-2017	141-075-0305	1-12-2017	Repeal	2-1-2017
141-068-0060	1-12-2017	Adopt	2-1-2017	141-075-0310	1-12-2017	Repeal	2-1-2017
141-068-0070	1-12-2017	Adopt	2-1-2017	141-075-0315	1-12-2017	Repeal	2-1-2017
141-068-0080	1-12-2017	Adopt	2-1-2017	141-075-0320	1-12-2017	Repeal	2-1-2017
141-068-0080	2-9-2017	Amend	3-1-2017	141-075-0325	1-12-2017	Repeal	2-1-2017
141-068-0090	1-12-2017	Adopt	2-1-2017	141-075-0330	1-12-2017	Repeal	2-1-2017
141-068-0100	1-12-2017	Adopt	2-1-2017	141-075-0335	1-12-2017	Repeal	2-1-2017
141-068-0110	1-12-2017	Adopt	2-1-2017	141-075-0400	1-12-2017	Repeal	2-1-2017
141-068-0120	1-12-2017	Adopt	2-1-2017	141-075-0405	1-12-2017	Repeal	2-1-2017
141-068-0130	1-12-2017	Adopt	2-1-2017	141-075-0460	1-12-2017	Repeal	2-1-2017
141-068-0140	1-12-2017	Adopt	2-1-2017	141-075-0465	1-12-2017	Repeal	2-1-2017
141-075-0010	1-12-2017	Repeal	2-1-2017	141-075-0470	1-12-2017	Repeal	2-1-2017
141-075-0015	1-12-2017	Repeal	2-1-2017	141-075-0475	1-12-2017	Repeal	2-1-2017
141-075-0020	1-12-2017	Repeal	2-1-2017	141-075-0480	1-12-2017	Repeal	2-1-2017
141-075-0030	1-12-2017	Repeal	2-1-2017	141-075-0520	1-12-2017	Repeal	2-1-2017
141-075-0035	1-12-2017	Repeal	2-1-2017	141-075-0525	1-12-2017	Repeal	2-1-2017
141-075-0040	1-12-2017	Repeal	2-1-2017	141-075-0530	1-12-2017	Repeal	2-1-2017
141-075-0045	1-12-2017	Repeal	2-1-2017	141-075-0535	1-12-2017	Repeal	2-1-2017
141-075-0050	1-12-2017	Repeal	2-1-2017	141-075-0540	1-12-2017	Repeal	2-1-2017
141-075-0055	1-12-2017	Repeal	2-1-2017	141-075-0545	1-12-2017	Repeal	2-1-2017
141-075-0060	1-12-2017	Repeal	2-1-2017	141-075-0550	1-12-2017	Repeal	2-1-2017
141-075-0080	1-12-2017	Repeal	2-1-2017	141-075-0555	1-12-2017	Repeal	2-1-2017
141-075-0110	1-12-2017	Repeal	2-1-2017	141-075-0560	1-12-2017	Repeal	2-1-2017
141-075-0130	1-12-2017	Repeal	2-1-2017	141-075-0565	1-12-2017	Repeal	2-1-2017
141-075-0140	1-12-2017	Repeal	2-1-2017	141-075-0570	1-12-2017	Repeal	2-1-2017
141-075-0145	1-12-2017	Repeal	2-1-2017	141-075-0575	1-12-2017	Repeal	2-1-2017
141-075-0150	1-12-2017	Repeal	2-1-2017	141-125-0100	1-12-2017	Amend	2-1-2017
141-075-0155	1-12-2017	Repeal	2-1-2017	141-125-0110	1-12-2017	Amend	2-1-2017
141-075-0160	1-12-2017	Repeal	2-1-2017	141-125-0120	1-12-2017	Amend	2-1-2017
141-075-0165	1-12-2017	Repeal	2-1-2017	141-125-0140	1-12-2017	Amend	2-1-2017
141-075-0170	1-12-2017	Repeal	2-1-2017	141-125-0160	1-12-2017	Amend	2-1-2017

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141-141-0100	7-1-2017	Adopt	7-1-2017	150-316-0075	1-1-2017	Repeal	2-1-2017
141-141-0110	7-1-2017	Adopt	7-1-2017	150-316-0086	1-1-2017	Amend	2-1-2017
141-141-0120	7-1-2017	Adopt	7-1-2017	150-316-0100	1-1-2017	Repeal	2-1-2017
141-141-0130	7-1-2017	Adopt	7-1-2017	150-316-0105	6-1-2017	Repeal	7-1-2017
141-141-0140	7-1-2017	Adopt	7-1-2017	150-316-0107	6-1-2017	Repeal	7-1-2017
141-141-0150	7-1-2017	Adopt	7-1-2017	150-316-0120	6-1-2017	Amend	7-1-2017
141-141-0160	7-1-2017	Adopt	7-1-2017	150-316-0150	6-1-2017	Amend	7-1-2017
150-090-0020	1-1-2017	Adopt	2-1-2017	150-316-0210	1-1-2017	Repeal	2-1-2017
150-118-0150	1-1-2017	Amend	2-1-2017	150-316-0215	1-1-2017	Repeal	2-1-2017
150-198-0900	6-8-2017	Amend	7-1-2017	150-316-0220	6-1-2017	Repeal	7-1-2017
150-280-0010	6-8-2017	Amend	7-1-2017	150-316-0235	6-1-2017	Amend	7-1-2017
150-294-0430	1-1-2017	Amend	2-1-2017	150-316-0359	1-1-2017	Amend	2-1-2017
150-294-0840	1-1-2017	Amend	2-1-2017	150-316-0435	1-1-2017	Amend	2-1-2017
150-305-0068	1-1-2017	Amend	2-1-2017	150-316-0470	6-1-2017	Amend	7-1-2017
150-305-0130	1-1-2017	Amend	2-1-2017	150-316-0493	6-1-2017	Amend	7-1-2017
150-305-0140	1-1-2017	Amend	2-1-2017	150-316-0517	1-1-2017	Repeal	2-1-2017
150-305-0142	1-1-2017	Amend	2-1-2017	150-316-0615	6-1-2017	Amend	7-1-2017
150-305-0150	6-1-2017	Amend	7-1-2017	150-316-0620	6-1-2017	Repeal	7-1-2017
150-305-0202	1-1-2017	Amend	2-1-2017	150-316-0645	6-1-2017	Repeal	7-1-2017
150-305-0304	6-8-2017	Amend	7-1-2017	150-320-0010	1-1-2017	Repeal	2-1-2017
150-305-0360	6-1-2017	Amend	7-1-2017	150-320-0040	1-1-2017	Amend	2-1-2017
150-305-0360 T	12-21-2016	Amend(T)	2-1-2017	150-321-0340	1-1-2017	Amend	2-1-2017
150-307-0470	1-1-2017	Repeal	2-1-2017	150-321-0340	6-1-2017	Amend	7-1-2017
150-307-0510	1-1-2017	Amend	2-1-2017	150-321-0810	1-1-2017	Amend	2-1-2017
150-308-0250	6-15-2017	Amend	7-1-2017	150-321-0810	6-1-2017	Amend	7-1-2017
150-308-0280	6-15-2017	Amend	7-1-2017	150-323-0130	1-1-2017	Amend	2-1-2017
150-308-0580	6-15-2017	Amend	7-1-2017	150-323-0150	1-1-2017	Amend	2-1-2017
150-308-0760	6-1-2017	Amend	7-1-2017	150-418-0010	1-1-2017	Adopt	2-1-2017
150-308-1140	6-1-2017	Amend	7-1-2017	162-050-0030	1-5-2017	Adopt	2-1-2017
150-310-0010	6-15-2017	Amend	7-1-2017	165-012-0005	4-7-2017	Amend	5-1-2017
150-310-0060	6-15-2017	Amend	7-1-2017	166-150-0005	1-13-2017	Amend	2-1-2017
150-310-0560	6-15-2017	Amend	7-1-2017	166-150-0110	1-13-2017	Amend	2-1-2017
150-311-0100	6-15-2017	Amend	7-1-2017	166-400-0010	1-13-2017	Amend	2-1-2017
150-311-0120	1-1-2017	Repeal	2-1-2017	166-400-0015	1-13-2017	Amend	2-1-2017
150-311-0130	1-1-2017	Repeal	2-1-2017	166-400-0020	1-13-2017	Amend	2-1-2017
150-311-0510	1-1-2017	Repeal	2-1-2017	166-400-0025	1-13-2017	Amend	2-1-2017
150-311-0760	1-1-2017	Amend	2-1-2017	166-400-0030	1-13-2017	Amend	2-1-2017
150-311-0800	6-15-2017	Amend	7-1-2017	166-400-0035	1-13-2017	Amend	2-1-2017
150-312-0010	6-15-2017	Amend	7-1-2017	166-400-0040	1-13-2017	Amend	2-1-2017
150-312-0020	6-15-2017	Amend	7-1-2017	166-400-0045	1-13-2017	Amend	2-1-2017
150-314-0020	6-1-2017	Repeal	7-1-2017	166-400-0050	1-13-2017	Amend	2-1-2017
150-314-0140	1-1-2017	Amend	2-1-2017	166-400-0055	1-13-2017	Amend	2-1-2017
150-314-0150	1-1-2017	Amend	2-1-2017	166-400-0060	1-13-2017	Amend	2-1-2017
150-314-0240	6-1-2017	Amend	7-1-2017	166-400-0065	1-13-2017	Amend	2-1-2017
150-314-0485	1-1-2017	Amend	2-1-2017	170-002-0010	5-25-2017	Amend	7-1-2017
150-315-0070	1-1-2017	Amend	2-1-2017	170-062-0000	2-23-2017	Amend	4-1-2017
150-315-0080	1-1-2017	Repeal	2-1-2017	170-063-0000	2-23-2017	Amend	4-1-2017
150-315-0082	1-1-2017	Repeal	2-1-2017	170-080-0001	4-19-2017	Adopt	6-1-2017
150-315-0084	1-1-2017	Repeal	2-1-2017	170-080-0002	4-19-2017	Adopt	6-1-2017
150-315-0120	1-1-2017	Repeal	2-1-2017	170-080-0005	4-19-2017	Adopt	6-1-2017
150-315-0121	1-1-2017	Adopt	2-1-2017	170-080-0010	4-19-2017	Adopt	6-1-2017
150-315-0125	1-1-2017	Adopt	2-1-2017	170-080-0015	4-19-2017	Adopt	6-1-2017
150-315-0130	6-1-2017	Repeal	7-1-2017	170-080-0020	4-19-2017	Adopt	6-1-2017
150-315-0132	6-1-2017	Repeal	7-1-2017	170-080-0025	4-19-2017	Adopt	6-1-2017
150-315-0190	1-1-2017	Repeal	2-1-2017	170-080-0030	4-19-2017	Adopt	6-1-2017

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170-080-0040	4-19-2017	Adopt	6-1-2017	257-050-0145	11-18-2016	Amend(T)	1-1-2017
170-080-0045	4-19-2017	Adopt	6-1-2017	257-050-0145	3-8-2017	Amend	4-1-2017
170-080-0050	4-19-2017	Adopt	6-1-2017	257-095-0000	12-14-2016	Adopt(T)	1-1-2017
170-080-0055	4-19-2017	Adopt	6-1-2017	257-095-0000	6-6-2017	Adopt	7-1-2017
170-080-0060	4-19-2017	Adopt	6-1-2017	257-095-0010	12-14-2016	Adopt(T)	1-1-2017
170-080-0065	4-19-2017	Adopt	6-1-2017	257-095-0010	6-6-2017	Adopt	7-1-2017
177-010-0100	4-1-2017	Amend	5-1-2017	257-095-0030	12-14-2016	Adopt(T)	1-1-2017
177-036-0030	2-1-2017	Amend	3-1-2017	257-095-0030	6-6-2017	Adopt	7-1-2017
177-036-0030(T)	2-1-2017	Repeal	3-1-2017	257-095-0040	12-14-2016	Adopt(T)	1-1-2017
177-099-0000	5-21-2017	Amend	6-1-2017	257-095-0040	6-6-2017	Adopt	7-1-2017
177-099-0020	5-21-2017	Amend	6-1-2017	257-095-0050	12-14-2016	Adopt(T)	1-1-2017
177-099-0030	5-21-2017	Amend	6-1-2017	257-095-0050	6-6-2017	Adopt	7-1-2017
177-099-0050	5-21-2017	Amend	6-1-2017	257-095-0060	12-14-2016	Adopt(T)	1-1-2017
177-099-0095	5-21-2017	Amend	6-1-2017	257-095-0060	6-6-2017	Adopt	7-1-2017
177-099-0100	5-21-2017	Amend	6-1-2017	257-095-0070	12-14-2016	Adopt(T)	1-1-2017
177-099-0105	5-21-2017	Adopt	6-1-2017	257-095-0070	6-6-2017	Adopt	7-1-2017
199-001-0010	11-17-2016	Amend	1-1-2017	257-095-0080	12-14-2016	Adopt(T)	1-1-2017
199-005-0080	11-17-2016	Adopt	1-1-2017	257-095-0080	6-6-2017	Adopt	7-1-2017
199-040-0027	11-17-2016	Adopt	1-1-2017	257-095-0090	12-14-2016	Adopt(T)	1-1-2017
213-003-0001	1-1-2017	Amend	2-1-2017	257-095-0090	6-6-2017	Adopt	7-1-2017
213-004-0001	1-1-2017	Amend	2-1-2017	257-095-0100	12-14-2016	Adopt(T)	1-1-2017
213-017-0004	1-1-2017	Amend	2-1-2017	257-095-0100	6-6-2017	Adopt	7-1-2017
213-017-0005	1-1-2017	Amend	2-1-2017	259-008-0010	4-1-2017	Amend	5-1-2017
213-017-0006	1-1-2017	Amend	2-1-2017	259-008-0011	4-1-2017	Amend	5-1-2017
213-017-0008	1-1-2017	Amend	2-1-2017	259-008-0020	5-1-2017	Amend	6-1-2017
213-017-0011	1-1-2017	Amend	2-1-2017	259-008-0025	12-22-2016	Amend	2-1-2017
213-018-0075	1-1-2017	Amend	2-1-2017	259-008-0045	1-1-2017	Amend	2-1-2017
213-019-0007	1-1-2017	Amend	2-1-2017	259-008-0060	1-1-2017	Amend	2-1-2017
213-019-0008	1-1-2017	Amend	2-1-2017	259-008-0060	5-1-2017	Amend	6-1-2017
213-019-0011	1-1-2017	Amend	2-1-2017	259-008-0065	3-22-2017	Amend	5-1-2017
213-019-0012	1-1-2017	Amend	2-1-2017	259-008-0075	4-1-2017	Amend	5-1-2017
213-019-0015	1-1-2017	Amend	2-1-2017	259-008-0080	4-1-2017	Amend	5-1-2017
213-071-0010	12-29-2016	Adopt	2-1-2017	259-008-0085	4-1-2017	Amend	5-1-2017
213-071-0015	12-29-2016	Adopt	2-1-2017	259-008-0090	3-22-2017	Amend	5-1-2017
213-071-0020	12-29-2016	Adopt	2-1-2017	259-009-0062	12-22-2016	Amend	2-1-2017
230-020-0330	12-1-2016	Amend	1-1-2017	259-060-0010	3-22-2017	Amend	5-1-2017
230-030-0150	2-28-2017	Amend	4-1-2017	259-060-0015	3-22-2017	Amend	5-1-2017
250-020-0041	5-1-2017	Amend	6-1-2017	259-060-0130	3-22-2017	Amend	5-1-2017
250-020-0091	12-5-2016	Amend(T)	1-1-2017	259-060-0200	3-22-2017	Adopt	5-1-2017
250-020-0091(T)	12-5-2016	Suspend	1-1-2017	259-060-0450	3-22-2017	Amend	5-1-2017
255-005-0005	4-5-2017	Amend	5-1-2017	259-060-0600	3-22-2017	Amend	5-1-2017
255-060-0011	1-3-2017	Amend(T)	2-1-2017	259-061-0010	3-22-2017	Amend	5-1-2017
255-060-0011	4-5-2017	Amend	5-1-2017	259-061-0018	3-22-2017	Amend	5-1-2017
255-060-0016	1-3-2017	Amend(T)	2-1-2017	259-061-0110	3-22-2017	Amend	5-1-2017
255-060-0016	4-5-2017	Amend	5-1-2017	291-001-0110	6-8-2017	Amend	7-1-2017
255-080-0001	4-5-2017	Amend	5-1-2017	291-001-0115	3-9-2017	Adopt	4-1-2017
255-085-0010	1-3-2017	Amend(T)	2-1-2017	291-058-0010	5-17-2017	Amend	7-1-2017
255-085-0010	3-21-2017	Amend(T)	5-1-2017	291-058-0020	5-17-2017	Amend	7-1-2017
255-085-0020	1-3-2017	Amend(T)	2-1-2017	291-058-0030	5-17-2017	Amend	7-1-2017
255-085-0020	3-21-2017	Amend(T)	5-1-2017	291-058-0040	5-17-2017	Amend	7-1-2017
255-085-0030	3-21-2017	Amend(T)	5-1-2017	291-058-0045	5-17-2017	Amend	7-1-2017
255-085-0040	3-21-2017	Amend(T)	5-1-2017	291-058-0046	5-17-2017	Amend	7-1-2017
255-085-0050	3-21-2017	Amend(T)	5-1-2017	291-058-0047	5-17-2017	Adopt	7-1-2017
255-085-0060	3-21-2017	Adopt(T)	5-1-2017	291-058-0050	5-17-2017	Amend	7-1-2017
257-050-0050	11-18-2016	Amend(T)	1-1-2017	291-058-0060	5-17-2017	Amend	7-1-2017

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291-058-0066	5-17-2017	Adopt	7-1-2017	309-008-0800	6-1-2017	Amend	7-1-2017
291-058-0067	5-17-2017	Adopt	7-1-2017	309-008-0800(T)	6-1-2017	Repeal	7-1-2017
291-058-0070	5-17-2017	Amend	7-1-2017	309-008-0900	11-30-2016	Adopt	1-1-2017
291-061-0061	3-30-2017	Amend(T)	5-1-2017	309-008-0900	1-1-2017	Amend(T)	2-1-2017
291-062-0100	5-17-2017	Amend	7-1-2017	309-008-0900	6-1-2017	Amend	7-1-2017
291-062-0110	5-17-2017	Amend	7-1-2017	309-008-0900(T)	6-1-2017	Repeal	7-1-2017
291-062-0120	5-17-2017	Amend	7-1-2017	309-008-0905	1-1-2017	Adopt(T)	2-1-2017
291-062-0130	5-17-2017	Amend	7-1-2017	309-008-0905	6-1-2017	Adopt	7-1-2017
291-062-0140	5-17-2017	Amend	7-1-2017	309-008-0905(T)	6-1-2017	Repeal	7-1-2017
291-062-0150	5-17-2017	Amend	7-1-2017	309-008-1000	11-30-2016	Adopt	1-1-2017
291-062-0160	5-17-2017	Amend	7-1-2017	309-008-1100	11-30-2016	Adopt	1-1-2017
291-062-0165	5-17-2017	Adopt	7-1-2017	309-008-1100	1-1-2017	Amend(T)	2-1-2017
291-062-0170	5-17-2017	Amend	7-1-2017	309-008-1100	6-1-2017	Amend	7-1-2017
291-063-0005	6-12-2017	Am. & Ren.	7-1-2017	309-008-1100(T)	6-1-2017	Repeal	7-1-2017
291-063-0010	6-12-2017	Am. & Ren.	7-1-2017	309-008-1200	11-30-2016	Adopt	1-1-2017
291-063-0016	6-12-2017	Am. & Ren.	7-1-2017	309-008-1200	1-1-2017	Amend(T)	2-1-2017
291-063-0030	3-15-2017	Amend(T)	4-1-2017	309-008-1200	6-1-2017	Amend	7-1-2017
291-063-0030	6-12-2017	Am. & Ren.	7-1-2017	309-008-1200(T)	6-1-2017	Repeal	7-1-2017
291-063-0030(T)	6-12-2017	Repeal	7-1-2017	309-008-1300	11-30-2016	Adopt	1-1-2017
291-063-0036	6-12-2017	Am. & Ren.	7-1-2017	309-008-1300	1-1-2017	Amend(T)	2-1-2017
291-063-0040	6-12-2017	Am. & Ren.	7-1-2017	309-008-1300	6-1-2017	Amend	7-1-2017
291-063-0050	6-12-2017	Am. & Ren.	7-1-2017	309-008-1300(T)	6-1-2017	Repeal	7-1-2017
291-063-0060	6-12-2017	Am. & Ren.	7-1-2017	309-008-1400	11-30-2016	Adopt	1-1-2017
291-063-0130	6-12-2017	Adopt	7-1-2017	309-008-1500	11-30-2016	Adopt	1-1-2017
291-063-0150	6-12-2017	Adopt	7-1-2017	309-008-1600	11-30-2016	Adopt	1-1-2017
291-063-1000	6-12-2017	Adopt	7-1-2017	309-011-0024	12-27-2016	Amend	2-1-2017
291-063-1010	6-12-2017	Adopt	7-1-2017	309-011-0026	12-27-2016	Amend	2-1-2017
291-065-0006	3-17-2017	Amend	5-1-2017	309-011-0028	12-27-2016	Amend	2-1-2017
291-065-0007	3-17-2017	Amend	5-1-2017	309-011-0031	12-27-2016	Adopt	2-1-2017
291-079-0030	11-30-2016	Repeal	1-1-2017	309-011-0032	12-27-2016	Amend	2-1-2017
291-079-0040	11-30-2016	Repeal	1-1-2017	309-011-0034	12-27-2016	Amend	2-1-2017
291-210-0010	2-15-2017	Amend(T)	3-1-2017	309-011-0036	12-27-2016	Amend	2-1-2017
291-210-0010	6-8-2017	Amend	7-1-2017	309-012-0130	12-1-2016	Repeal	1-1-2017
291-210-0010(T)	6-8-2017	Repeal	7-1-2017	309-012-0140	12-1-2016	Repeal	1-1-2017
291-210-0020	2-15-2017	Amend(T)	3-1-2017	309-012-0150	12-1-2016	Repeal	1-1-2017
291-210-0020	6-8-2017	Amend	7-1-2017	309-012-0160	12-1-2016	Repeal	1-1-2017
291-210-0020(T)	6-8-2017	Repeal	7-1-2017	309-012-0170	12-1-2016	Repeal	1-1-2017
291-210-0030	2-15-2017	Amend(T)	3-1-2017	309-012-0180	12-1-2016	Repeal	1-1-2017
291-210-0030	6-8-2017	Amend	7-1-2017	309-012-0190	12-1-2016	Repeal	1-1-2017
291-210-0030(T)	6-8-2017	Repeal	7-1-2017	309-012-0200	12-1-2016	Repeal	1-1-2017
291-210-0040	2-15-2017	Adopt(T)	3-1-2017	309-012-0210	12-1-2016	Repeal	1-1-2017
291-210-0040	6-8-2017	Adopt	7-1-2017	309-012-0220	12-1-2016	Repeal	1-1-2017
291-210-0040(T)	6-8-2017	Repeal	7-1-2017	309-012-0230	12-1-2016	Repeal	1-1-2017
291-210-0050	2-15-2017	Adopt(T)	3-1-2017	309-014-0000	12-1-2016	Amend	1-1-2017
291-210-0050	6-8-2017	Adopt	7-1-2017	309-014-0005	12-1-2016	Amend	1-1-2017
291-210-0050(T)	6-8-2017	Repeal	7-1-2017	309-014-0010	12-1-2016	Amend	1-1-2017
309-008-0100	11-30-2016	Adopt	1-1-2017	309-014-0015	12-1-2016	Amend	1-1-2017
309-008-0200	11-30-2016	Adopt	1-1-2017	309-014-0020	12-1-2016	Amend	1-1-2017
309-008-0250	11-30-2016	Adopt	1-1-2017	309-014-0021	12-1-2016	Adopt	1-1-2017
309-008-0300	11-30-2016	Adopt	1-1-2017	309-014-0022	12-1-2016	Adopt	1-1-2017
309-008-0400	11-30-2016	Adopt	1-1-2017	309-014-0023	12-1-2016	Adopt	1-1-2017
309-008-0500	11-30-2016	Adopt	1-1-2017	309-014-0025	12-1-2016	Amend	1-1-2017
309-008-0600	11-30-2016	Adopt	1-1-2017	309-014-0030	12-1-2016	Amend	1-1-2017
309-008-0700	11-30-2016	Adopt	1-1-2017	309-014-0035	12-1-2016	Amend	1-1-2017
309-008-0800	11-30-2016	Adopt	1-1-2017	309-014-0036	12-1-2016	Adopt	1-1-2017

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309-018-0100	11-28-2016	Amend	1-1-2017	309-019-0248	11-30-2016	Adopt	1-1-2017
309-018-0105	11-28-2016	Amend	1-1-2017	309-019-0248	1-18-2017	Amend(T)	3-1-2017
309-018-0107	11-28-2016	Adopt	1-1-2017	309-019-0250	11-30-2016	Adopt	1-1-2017
309-018-0160	11-28-2016	Amend	1-1-2017	309-019-0250	1-18-2017	Amend(T)	3-1-2017
309-018-0210	11-28-2016	Amend	1-1-2017	309-019-0255	11-30-2016	Adopt	1-1-2017
309-018-0215	11-28-2016	Amend	1-1-2017	309-019-0270	12-28-2016	Adopt(T)	2-1-2017
309-019-0100	11-30-2016	Amend	1-1-2017	309-019-0270	1-18-2017	Amend(T)	3-1-2017
309-019-0105	11-30-2016	Amend	1-1-2017	309-019-0275	12-28-2016	Adopt(T)	2-1-2017
309-019-0105	12-28-2016	Amend(T)	2-1-2017	309-019-0275	1-18-2017	Amend(T)	3-1-2017
309-019-0110	11-30-2016	Amend	1-1-2017	309-019-0280	12-28-2016	Adopt(T)	2-1-2017
309-019-0110	12-28-2016	Amend(T)	2-1-2017	309-019-0280	1-18-2017	Amend(T)	3-1-2017
309-019-0115	12-28-2016	Amend(T)	2-1-2017	309-019-0285	12-28-2016	Adopt(T)	2-1-2017
309-019-0120	12-28-2016	Amend(T)	2-1-2017	309-019-0285	1-18-2017	Amend(T)	3-1-2017
309-019-0125	11-30-2016	Amend	1-1-2017	309-019-0290	12-28-2016	Adopt(T)	2-1-2017
309-019-0125	12-28-2016	Amend(T)	2-1-2017	309-019-0290	1-18-2017	Amend(T)	3-1-2017
309-019-0130	11-30-2016	Amend	1-1-2017	309-019-0295	12-28-2016	Adopt(T)	2-1-2017
309-019-0130	12-28-2016	Amend(T)	2-1-2017	309-019-0295	1-18-2017	Amend(T)	3-1-2017
309-019-0135	11-30-2016	Amend	1-1-2017	309-022-0100	12-1-2016	Amend	1-1-2017
309-019-0135	12-28-2016	Amend(T)	2-1-2017	309-022-0105	12-1-2016	Amend	1-1-2017
309-019-0140	11-30-2016	Amend	1-1-2017	309-022-0105	12-29-2016	Amend(T)	2-1-2017
309-019-0140	12-28-2016	Amend(T)	2-1-2017	309-022-0110	12-29-2016	Amend(T)	2-1-2017
309-019-0145	11-30-2016	Amend	1-1-2017	309-022-0115	12-29-2016	Amend(T)	2-1-2017
309-019-0145	12-28-2016	Amend(T)	2-1-2017	309-022-0125	12-29-2016	Amend(T)	2-1-2017
309-019-0150	12-28-2016	Amend(T)	2-1-2017	309-022-0130	12-29-2016	Amend(T)	2-1-2017
309-019-0150	1-18-2017	Amend(T)	3-1-2017	309-022-0135	12-1-2016	Amend	1-1-2017
309-019-0151	12-28-2016	Adopt(T)	2-1-2017	309-022-0140	12-29-2016	Amend(T)	2-1-2017
309-019-0151	1-18-2017	Amend(T)	3-1-2017	309-022-0155	12-29-2016	Amend(T)	2-1-2017
309-019-0152	12-28-2016	Adopt(T)	2-1-2017	309-022-0160	12-29-2016	Amend(T)	2-1-2017
309-019-0155	12-28-2016	Amend(T)	2-1-2017	309-022-0175	12-1-2016	Amend	1-1-2017
309-019-0160	12-28-2016	Amend(T)	2-1-2017	309-022-0175	12-29-2016	Amend(T)	2-1-2017
309-019-0165	12-28-2016	Amend(T)	2-1-2017	309-022-0180	12-29-2016	Amend(T)	2-1-2017
309-019-0175	11-30-2016	Amend	1-1-2017	309-022-0192	12-29-2016	Adopt(T)	2-1-2017
309-019-0175	12-28-2016	Amend(T)	2-1-2017	309-022-0195	12-29-2016	Amend(T)	2-1-2017
309-019-0180	12-28-2016	Amend(T)	2-1-2017	309-022-0200	12-29-2016	Amend(T)	2-1-2017
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309-019-0195	11-30-2016	Amend	1-1-2017	309-022-0205	12-29-2016	Amend(T)	2-1-2017
309-019-0210	11-30-2016	Amend	1-1-2017	309-022-0210	12-29-2016	Amend(T)	2-1-2017
309-019-0215	11-30-2016	Amend	1-1-2017	309-022-0215	12-29-2016	Amend(T)	2-1-2017
309-019-0215	12-28-2016	Amend(T)	2-1-2017	309-022-0220	12-29-2016	Amend(T)	2-1-2017
309-019-0220	11-30-2016	Amend	1-1-2017	309-022-0225	12-29-2016	Amend(T)	2-1-2017
309-019-0225	11-30-2016	Adopt	1-1-2017	309-022-0230	12-29-2016	Amend(T)	2-1-2017
309-019-0225	12-28-2016	Amend(T)	2-1-2017	309-023-0100	12-29-2016	Adopt	2-1-2017
309-019-0225	1-18-2017	Amend(T)	3-1-2017	309-023-0110	12-29-2016	Adopt	2-1-2017
309-019-0226	12-28-2016	Adopt(T)	2-1-2017	309-023-0120	12-29-2016	Adopt	2-1-2017
309-019-0226	1-18-2017	Amend(T)	3-1-2017	309-023-0130	12-29-2016	Adopt	2-1-2017
309-019-0230	11-30-2016	Adopt	1-1-2017	309-023-0140	12-29-2016	Adopt	2-1-2017
309-019-0230	12-28-2016	Amend(T)	2-1-2017	309-023-0150	12-29-2016	Adopt	2-1-2017
309-019-0235	11-30-2016	Adopt	1-1-2017	309-023-0160	12-29-2016	Adopt	2-1-2017
309-019-0235	1-18-2017	Amend(T)	3-1-2017	309-023-0170	12-29-2016	Adopt	2-1-2017
309-019-0240	11-30-2016	Adopt	1-1-2017	309-023-0180	12-29-2016	Adopt	2-1-2017
309-019-0240	12-28-2016	Amend(T)	2-1-2017	309-027-0010	12-5-2016	Adopt	1-1-2017
309-019-0241	12-28-2016	Adopt(T)	2-1-2017	309-027-0020	12-5-2016	Adopt	1-1-2017
309-019-0242	12-28-2016	Adopt(T)	2-1-2017	309-027-0030	12-5-2016	Adopt	1-1-2017
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309-027-0060	12-5-2016	Adopt	1-1-2017	309-035-0157	3-4-2017	Suspend	4-1-2017
309-032-0850	12-1-2016	Amend	1-1-2017	309-035-0157	6-8-2017	Repeal	7-1-2017
309-032-0860	12-1-2016	Amend	1-1-2017	309-035-0159	3-4-2017	Suspend	4-1-2017
309-032-0870	12-1-2016	Amend	1-1-2017	309-035-0159	6-8-2017	Repeal	7-1-2017
309-032-0890	12-1-2016	Amend	1-1-2017	309-035-0163	3-4-2017	Adopt(T)	4-1-2017
309-033-0210	12-29-2016	Amend	2-1-2017	309-035-0163	6-8-2017	Adopt	7-1-2017
309-033-0410	12-29-2016	Amend	2-1-2017	309-035-0163(T)	6-8-2017	Repeal	7-1-2017
309-033-0432	12-29-2016	Amend	2-1-2017	309-035-0165	3-4-2017	Amend(T)	4-1-2017
309-033-0510	12-29-2016	Amend	2-1-2017	309-035-0165	6-8-2017	Amend	7-1-2017
309-033-0530	12-29-2016	Amend	2-1-2017	309-035-0165(T)	6-8-2017	Repeal	7-1-2017
309-033-0610	12-29-2016	Amend	2-1-2017	309-035-0167	3-4-2017	Suspend	4-1-2017
309-033-0710	12-29-2016	Amend	2-1-2017	309-035-0167	6-8-2017	Repeal	7-1-2017
309-033-0720	12-29-2016	Amend	2-1-2017	309-035-0170	3-4-2017	Amend(T)	4-1-2017
309-033-0740	12-29-2016	Amend	2-1-2017	309-035-0170	6-8-2017	Amend	7-1-2017
309-033-0910	12-29-2016	Amend	2-1-2017	309-035-0170(T)	6-8-2017	Repeal	7-1-2017
309-033-0970	12-29-2016	Amend	2-1-2017	309-035-0175	3-4-2017	Amend(T)	4-1-2017
309-035-0100	3-4-2017	Amend(T)	4-1-2017	309-035-0175	6-8-2017	Amend	7-1-2017
309-035-0100	6-8-2017	Amend	7-1-2017	309-035-0175(T)	6-8-2017	Repeal	7-1-2017
309-035-0100(T)	6-8-2017	Repeal	7-1-2017	309-035-0183	3-4-2017	Adopt(T)	4-1-2017
309-035-0105	3-4-2017	Amend(T)	4-1-2017	309-035-0183	6-8-2017	Adopt	7-1-2017
309-035-0105	6-8-2017	Amend	7-1-2017	309-035-0183(T)	6-8-2017	Repeal	7-1-2017
309-035-0105(T)	6-8-2017	Repeal	7-1-2017	309-035-0185	3-4-2017	Amend(T)	4-1-2017
309-035-0110	3-4-2017	Amend(T)	4-1-2017	309-035-0185	6-8-2017	Amend	7-1-2017
309-035-0110	6-8-2017	Amend	7-1-2017	309-035-0185(T)	6-8-2017	Repeal	7-1-2017
309-035-0110(T)	6-8-2017	Repeal	7-1-2017	309-035-0190	3-4-2017	Amend(T)	4-1-2017
309-035-0113	3-4-2017	Suspend	4-1-2017	309-035-0190	6-8-2017	Amend	7-1-2017
309-035-0113	6-8-2017	Repeal	7-1-2017	309-035-0190(T)	6-8-2017	Repeal	7-1-2017
309-035-0115	3-4-2017	Amend(T)	4-1-2017	309-035-0195	3-4-2017	Adopt(T)	4-1-2017
309-035-0115	6-8-2017	Amend	7-1-2017	309-035-0195	6-8-2017	Adopt	7-1-2017
309-035-0115(T)	6-8-2017	Repeal	7-1-2017	309-035-0195(T)	6-8-2017	Repeal	7-1-2017
309-035-0117	3-4-2017	Suspend	4-1-2017	309-035-0200	3-4-2017	Adopt(T)	4-1-2017
309-035-0117	6-8-2017	Repeal	7-1-2017	309-035-0200	6-8-2017	Adopt	7-1-2017
309-035-0120	3-4-2017	Amend(T)	4-1-2017	309-035-0200(T)	6-8-2017	Repeal	7-1-2017
309-035-0120	6-8-2017	Amend	7-1-2017	309-035-0205	3-4-2017	Adopt(T)	4-1-2017
309-035-0120(T)	6-8-2017	Repeal	7-1-2017	309-035-0205	6-8-2017	Adopt	7-1-2017
309-035-0125	3-4-2017	Amend(T)	4-1-2017	309-035-0205(T)	6-8-2017	Repeal	7-1-2017
309-035-0125	6-8-2017	Amend	7-1-2017	309-035-0210	3-4-2017	Adopt(T)	4-1-2017
309-035-0125(T)	6-8-2017	Repeal	7-1-2017	309-035-0210	6-8-2017	Adopt	7-1-2017
309-035-0130	3-4-2017	Amend(T)	4-1-2017	309-035-0210(T)	6-8-2017	Repeal	7-1-2017
309-035-0130	6-8-2017	Amend	7-1-2017	309-035-0215	3-4-2017	Adopt(T)	4-1-2017
309-035-0130(T)	6-8-2017	Repeal	7-1-2017	309-035-0215	6-8-2017	Adopt	7-1-2017
309-035-0135	3-4-2017	Amend(T)	4-1-2017	309-035-0215(T)	6-8-2017	Repeal	7-1-2017
309-035-0135	6-8-2017	Amend	7-1-2017	309-035-0220	3-4-2017	Adopt(T)	4-1-2017
309-035-0135(T)	6-8-2017	Repeal	7-1-2017	309-035-0220	6-8-2017	Adopt	7-1-2017
309-035-0140	3-4-2017	Amend(T)	4-1-2017	309-035-0220(T)	6-8-2017	Repeal	7-1-2017
309-035-0140	6-8-2017	Amend	7-1-2017	309-035-0225	3-4-2017	Adopt(T)	4-1-2017
309-035-0140(T)	6-8-2017	Repeal	7-1-2017	309-035-0225	6-8-2017	Adopt	7-1-2017
309-035-0145	3-4-2017	Amend(T)	4-1-2017	309-035-0225(T)	6-8-2017	Repeal	7-1-2017
309-035-0145	6-8-2017	Amend	7-1-2017	309-035-0250	3-4-2017	Suspend	4-1-2017
309-035-0145(T)	6-8-2017	Repeal	7-1-2017	309-035-0250	6-8-2017	Repeal	7-1-2017
309-035-0150	3-4-2017	Amend(T)	4-1-2017	309-035-0260	3-4-2017	Suspend	4-1-2017
309-035-0150	6-8-2017	Amend	7-1-2017	309-035-0260	6-8-2017	Repeal	7-1-2017
309-035-0150(T)	6-8-2017	Repeal	7-1-2017	309-035-0270	3-4-2017	Suspend	4-1-2017
309-035-0155	3-4-2017	Amend(T)	4-1-2017	309-035-0270	6-8-2017	Repeal	7-1-2017
309-035-0155	6-8-2017	Amend	7-1-2017	309-035-0280	3-4-2017	Suspend	4-1-2017

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309-035-0290	3-4-2017	Suspend	4-1-2017	309-040-0307	3-4-2017	Adopt(T)	4-1-2017
309-035-0290	6-8-2017	Repeal	7-1-2017	309-040-0310	3-4-2017	Amend(T)	4-1-2017
309-035-0300	3-4-2017	Suspend	4-1-2017	309-040-0315	3-4-2017	Amend(T)	4-1-2017
309-035-0300	6-8-2017	Repeal	7-1-2017	309-040-0320	3-4-2017	Amend(T)	4-1-2017
309-035-0310	3-4-2017	Suspend	4-1-2017	309-040-0325	3-4-2017	Amend(T)	4-1-2017
309-035-0310	6-8-2017	Repeal	7-1-2017	309-040-0330	3-4-2017	Amend(T)	4-1-2017
309-035-0320	3-4-2017	Suspend	4-1-2017	309-040-0335	3-4-2017	Amend(T)	4-1-2017
309-035-0320	6-8-2017	Repeal	7-1-2017	309-040-0340	3-4-2017	Amend(T)	4-1-2017
309-035-0330	3-4-2017	Suspend	4-1-2017	309-040-0345	3-4-2017	Amend(T)	4-1-2017
309-035-0330	6-8-2017	Repeal	7-1-2017	309-040-0350	3-4-2017	Amend(T)	4-1-2017
309-035-0340	3-4-2017	Suspend	4-1-2017	309-040-0355	3-4-2017	Amend(T)	4-1-2017
309-035-0340	6-8-2017	Repeal	7-1-2017	309-040-0360	3-4-2017	Amend(T)	4-1-2017
309-035-0350	3-4-2017	Suspend	4-1-2017	309-040-0365	3-4-2017	Amend(T)	4-1-2017
309-035-0350	6-8-2017	Repeal	7-1-2017	309-040-0370	3-4-2017	Amend(T)	4-1-2017
309-035-0360	3-4-2017	Suspend	4-1-2017	309-040-0375	3-4-2017	Amend(T)	4-1-2017
309-035-0360	6-8-2017	Repeal	7-1-2017	309-040-0380	3-4-2017	Amend(T)	4-1-2017
309-035-0370	3-4-2017	Suspend	4-1-2017	309-040-0385	3-4-2017	Amend(T)	4-1-2017
309-035-0370	6-8-2017	Repeal	7-1-2017	309-040-0390	3-4-2017	Amend(T)	4-1-2017
309-035-0380	3-4-2017	Suspend	4-1-2017	309-040-0393	3-4-2017	Adopt(T)	4-1-2017
309-035-0380	6-8-2017	Repeal	7-1-2017	309-040-0394	3-4-2017	Adopt(T)	4-1-2017
309-035-0390	3-4-2017	Suspend	4-1-2017	309-040-0395	3-4-2017	Amend(T)	4-1-2017
309-035-0390	6-8-2017	Repeal	7-1-2017	309-040-0400	3-4-2017	Amend(T)	4-1-2017
309-035-0400	3-4-2017	Suspend	4-1-2017	309-040-0405	3-4-2017	Amend(T)	4-1-2017
309-035-0400	6-8-2017	Repeal	7-1-2017	309-040-0410	3-4-2017	Amend(T)	4-1-2017
309-035-0410	3-4-2017	Suspend	4-1-2017	309-040-0415	3-4-2017	Amend(T)	4-1-2017
309-035-0410	6-8-2017	Repeal	7-1-2017	309-040-0420	3-4-2017	Amend(T)	4-1-2017
309-035-0420	3-4-2017	Suspend	4-1-2017	309-040-0425	3-4-2017	Amend(T)	4-1-2017
309-035-0420	6-8-2017	Repeal	7-1-2017	309-040-0430	3-4-2017	Amend(T)	4-1-2017
309-035-0430	3-4-2017	Suspend	4-1-2017	309-040-0435	3-4-2017	Amend(T)	4-1-2017
309-035-0430	6-8-2017	Repeal	7-1-2017	309-040-0440	3-4-2017	Amend(T)	4-1-2017
309-035-0440	3-4-2017	Suspend	4-1-2017	309-040-0445	3-4-2017	Amend(T)	4-1-2017
309-035-0440	6-8-2017	Repeal	7-1-2017	309-040-0450	3-4-2017	Amend(T)	4-1-2017
309-035-0450	3-4-2017	Suspend	4-1-2017	309-040-0455	3-4-2017	Amend(T)	4-1-2017
309-035-0450	6-8-2017	Repeal	7-1-2017	325-005-0015	3-1-2017	Amend	4-1-2017
309-035-0460	3-4-2017	Suspend	4-1-2017	325-005-0015	6-30-2017	Amend	7-1-2017
309-035-0460	6-8-2017	Repeal	7-1-2017	330-001-0015	5-24-2017	Repeal	7-1-2017
309-035-0500	3-4-2017	Suspend	4-1-2017	330-001-0025	5-24-2017	Amend	7-1-2017
309-035-0500	6-8-2017	Repeal	7-1-2017	330-007-0200	5-8-2017	Amend	6-1-2017
309-035-0550	3-4-2017	Suspend	4-1-2017	330-007-0210	5-8-2017	Amend	6-1-2017
309-035-0550	6-8-2017	Repeal	7-1-2017	330-007-0220	5-8-2017	Repeal	6-1-2017
309-035-0560	3-4-2017	Suspend	4-1-2017	330-007-0230	5-8-2017	Repeal	6-1-2017
309-035-0560	6-8-2017	Repeal	7-1-2017	330-007-0240	5-8-2017	Amend	6-1-2017
309-035-0570	3-4-2017	Suspend	4-1-2017	330-007-0250	5-8-2017	Repeal	6-1-2017
309-035-0570	6-8-2017	Repeal	7-1-2017	330-007-0260	5-8-2017	Repeal	6-1-2017
309-035-0580	3-4-2017	Suspend	4-1-2017	330-007-0270	5-8-2017	Repeal	6-1-2017
309-035-0580	6-8-2017	Repeal	7-1-2017	330-007-0280	5-8-2017	Repeal	6-1-2017
309-035-0590	3-4-2017	Suspend	4-1-2017	330-007-0290	5-8-2017	Repeal	6-1-2017
309-035-0590	6-8-2017	Repeal	7-1-2017	330-007-0300	5-8-2017	Repeal	6-1-2017
309-035-0600	3-4-2017	Suspend	4-1-2017	330-007-0310	5-8-2017	Repeal	6-1-2017
309-035-0600	6-8-2017	Repeal	7-1-2017	330-007-0320	5-8-2017	Amend	6-1-2017
309-039-0500	11-30-2016	Amend	1-1-2017	330-007-0330	5-8-2017	Amend	6-1-2017
309-039-0510	11-30-2016	Amend	1-1-2017	330-063-0010	12-21-2016	Amend	2-1-2017
309-039-0530	11-30-2016	Amend	1-1-2017	330-063-0015	12-21-2016	Amend	2-1-2017
309-039-0580	11-30-2016	Amend	1-1-2017	330-063-0020	12-21-2016	Amend	2-1-2017
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330-070-0014	1-1-2017	Amend	2-1-2017	331-915-0065	1-6-2017	Amend	2-1-2017
330-070-0022	1-1-2017	Amend	2-1-2017	331-915-0070	1-6-2017	Amend	2-1-2017
330-070-0024	1-1-2017	Amend	2-1-2017	331-915-0075	1-6-2017	Amend	2-1-2017
330-070-0025	1-1-2017	Amend	2-1-2017	331-915-0080	1-6-2017	Amend	2-1-2017
330-070-0026	1-1-2017	Amend	2-1-2017	331-915-0085	1-6-2017	Amend	2-1-2017
330-070-0027	1-1-2017	Amend	2-1-2017	333-004-0000	1-10-2017	Amend	2-1-2017
330-070-0029	1-1-2017	Amend	2-1-2017	333-004-0010	1-10-2017	Amend	2-1-2017
330-070-0060	1-1-2017	Amend	2-1-2017	333-004-0020	1-10-2017	Amend	2-1-2017
330-070-0073	1-1-2017	Amend	2-1-2017	333-004-0030	1-10-2017	Amend	2-1-2017
330-092-0015	12-21-2016	Amend	2-1-2017	333-004-0040	1-10-2017	Amend	2-1-2017
330-110-0042	1-25-2017	Amend(T)	3-1-2017	333-004-0050	1-10-2017	Amend	2-1-2017
330-160-0015	12-21-2016	Amend	2-1-2017	333-004-0060	1-10-2017	Amend	2-1-2017
330-160-0030	12-21-2016	Amend	2-1-2017	333-004-0070	1-10-2017	Amend	2-1-2017
330-160-0035	12-21-2016	Amend	2-1-2017	333-004-0080	1-10-2017	Amend	2-1-2017
330-160-0080	12-21-2016	Adopt	2-1-2017	333-004-0110	1-10-2017	Amend	2-1-2017
330-160-0090	12-21-2016	Adopt	2-1-2017	333-004-0120	1-10-2017	Amend	2-1-2017
330-220-0000	1-25-2017	Amend	3-1-2017	333-004-0130	1-10-2017	Amend	2-1-2017
330-220-0010	1-25-2017	Amend	3-1-2017	333-004-0140	1-10-2017	Amend	2-1-2017
330-220-0020	1-25-2017	Amend	3-1-2017	333-004-0150	1-10-2017	Amend	2-1-2017
330-220-0030	1-25-2017	Amend	3-1-2017	333-004-0160	1-10-2017	Amend	2-1-2017
330-220-0040	1-25-2017	Amend	3-1-2017	333-007-0010	11-28-2016	Amend	1-1-2017
330-220-0050	1-25-2017	Amend	3-1-2017	333-007-0010(T)	11-28-2016	Repeal	1-1-2017
330-220-0070	1-25-2017	Amend	3-1-2017	333-007-0090	11-28-2016	Amend	1-1-2017
330-220-0080	1-25-2017	Amend	3-1-2017	333-007-0090	12-2-2016	Amend(T)	1-1-2017
330-220-0090	1-25-2017	Amend	3-1-2017	333-007-0090	12-15-2016	Amend(T)	1-1-2017
330-220-0100	1-25-2017	Amend	3-1-2017	333-007-0090	5-31-2017	Amend	7-1-2017
330-220-0150	1-25-2017	Amend	3-1-2017	333-007-0090(T)	5-31-2017	Repeal	7-1-2017
331-910-0000	1-6-2017	Amend	2-1-2017	333-007-0100	11-28-2016	Amend	1-1-2017
331-910-0005	1-6-2017	Amend	2-1-2017	333-007-0100(T)	11-28-2016	Repeal	1-1-2017
331-910-0010	1-6-2017	Amend	2-1-2017	333-007-0200	11-28-2016	Amend	1-1-2017
331-910-0015	1-6-2017	Amend	2-1-2017	333-007-0200	5-31-2017	Amend	7-1-2017
331-910-0025	1-6-2017	Amend	2-1-2017	333-007-0210	11-28-2016	Amend	1-1-2017
331-910-0030	1-6-2017	Amend	2-1-2017	333-007-0210	5-31-2017	Amend	7-1-2017
331-910-0035	1-6-2017	Amend	2-1-2017	333-007-0220	11-28-2016	Amend	1-1-2017
331-910-0040	1-6-2017	Amend	2-1-2017	333-007-0220	5-31-2017	Amend	7-1-2017
331-910-0045	1-6-2017	Amend	2-1-2017	333-007-0300	11-28-2016	Amend	1-1-2017
331-910-0050	1-6-2017	Amend	2-1-2017	333-007-0300	5-31-2017	Amend	7-1-2017
331-910-0055	1-6-2017	Amend	2-1-2017	333-007-0310	12-2-2016	Amend(T)	1-1-2017
331-910-0060	1-6-2017	Amend	2-1-2017	333-007-0310	5-31-2017	Amend	7-1-2017
331-910-0070	1-6-2017	Amend	2-1-2017	333-007-0310(T)	5-31-2017	Repeal	7-1-2017
331-910-0075	1-6-2017	Amend	2-1-2017	333-007-0315	12-2-2016	Amend(T)	1-1-2017
331-910-0080	1-6-2017	Amend	2-1-2017	333-007-0315	5-31-2017	Amend	7-1-2017
331-910-0085	1-6-2017	Amend	2-1-2017	333-007-0315(T)	5-31-2017	Repeal	7-1-2017
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331-915-0005	1-6-2017	Amend	2-1-2017	333-007-0320	12-15-2016	Amend(T)	1-1-2017
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331-915-0015	1-6-2017	Amend	2-1-2017	333-007-0320(T)	5-31-2017	Repeal	7-1-2017
331-915-0020	1-6-2017	Amend	2-1-2017	333-007-0330	5-31-2017	Amend	7-1-2017
331-915-0025	1-6-2017	Amend	2-1-2017	333-007-0340	5-31-2017	Amend	7-1-2017
331-915-0030	1-6-2017	Amend	2-1-2017	333-007-0345	5-31-2017	Amend	7-1-2017
331-915-0035	1-6-2017	Amend	2-1-2017	333-007-0350	12-2-2016	Amend(T)	1-1-2017
331-915-0040	1-6-2017	Amend	2-1-2017	333-007-0350	12-15-2016	Amend(T)	1-1-2017
331-915-0045	1-6-2017	Repeal	2-1-2017	333-007-0350	5-31-2017	Amend	7-1-2017
331-915-0050	1-6-2017	Amend	2-1-2017	333-007-0350(T)	5-31-2017	Repeal	7-1-2017

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333-007-0360	12-15-2016	Amend(T)	1-1-2017	333-008-1245	5-31-2017	Amend	7-1-2017
333-007-0360	5-31-2017	Amend	7-1-2017	333-008-1248	5-31-2017	Amend	7-1-2017
333-007-0360(T)	5-31-2017	Repeal	7-1-2017	333-008-1255	11-28-2016	Adopt	1-1-2017
333-007-0370	5-31-2017	Amend	7-1-2017	333-008-1500	11-28-2016	Amend	1-1-2017
333-007-0390	5-31-2017	Amend	7-1-2017	333-008-1500	5-31-2017	Repeal	7-1-2017
333-007-0400	5-31-2017	Amend	7-1-2017	333-008-1500(T)	11-28-2016	Repeal	1-1-2017
333-007-0410	12-2-2016	Amend(T)	1-1-2017	333-008-1501	5-31-2017	Repeal	7-1-2017
333-007-0410	5-31-2017	Amend	7-1-2017	333-008-1505	11-28-2016	Amend	1-1-2017
333-007-0410(T)	5-31-2017	Repeal	7-1-2017	333-008-1505	5-31-2017	Repeal	7-1-2017
333-007-0420	5-31-2017	Amend	7-1-2017	333-008-1505(T)	11-28-2016	Repeal	1-1-2017
333-007-0430	12-2-2016	Amend(T)	1-1-2017	333-008-1620	11-28-2016	Amend	1-1-2017
333-007-0430	5-31-2017	Amend	7-1-2017	333-008-1620	5-31-2017	Amend	7-1-2017
333-007-0430(T)	5-31-2017	Repeal	7-1-2017	333-008-1630	5-31-2017	Amend	7-1-2017
333-007-0440	12-2-2016	Amend(T)	1-1-2017	333-008-1690	5-31-2017	Amend	7-1-2017
333-007-0440	12-15-2016	Amend(T)	1-1-2017	333-008-1730	11-28-2016	Amend	1-1-2017
333-007-0440	5-31-2017	Amend	7-1-2017	333-008-1740	11-28-2016	Amend	1-1-2017
333-007-0440(T)	5-31-2017	Repeal	7-1-2017	333-008-1740(T)	11-28-2016	Repeal	1-1-2017
333-007-0450	12-2-2016	Amend(T)	1-1-2017	333-008-1760	11-28-2016	Amend	1-1-2017
333-007-0450	5-31-2017	Amend	7-1-2017	333-008-1760	5-31-2017	Amend	7-1-2017
333-007-0450(T)	5-31-2017	Repeal	7-1-2017	333-008-1770	11-28-2016	Amend	1-1-2017
333-007-0480	12-2-2016	Amend(T)	1-1-2017	333-008-1810	5-31-2017	Amend	7-1-2017
333-007-0480	5-31-2017	Amend	7-1-2017	333-008-1820	11-28-2016	Amend	1-1-2017
333-007-0480(T)	5-31-2017	Repeal	7-1-2017	333-008-1830	5-31-2017	Amend	7-1-2017
333-007-0490	12-2-2016	Suspend	1-1-2017	333-008-2080	11-28-2016	Amend	1-1-2017
333-007-0490	5-31-2017	Repeal	7-1-2017	333-008-2120	11-28-2016	Amend	1-1-2017
333-007-0500	5-31-2017	Adopt	7-1-2017	333-008-2130	11-28-2016	Repeal	1-1-2017
333-007-2000	3-2-2017	Adopt(T)	4-1-2017	333-008-2180	5-31-2017	Amend	7-1-2017
333-007-2000	5-31-2017	Adopt	7-1-2017	333-008-2190	11-28-2016	Amend	1-1-2017
333-007-2000(T)	5-31-2017	Repeal	7-1-2017	333-008-2210	5-31-2017	Adopt	7-1-2017
333-008-0010	11-28-2016	Amend	1-1-2017	333-008-9900	11-28-2016	Amend	1-1-2017
333-008-0023	11-28-2016	Amend	1-1-2017	333-008-9900	5-31-2017	Repeal	7-1-2017
333-008-0033	5-31-2017	Amend	7-1-2017	333-008-9910	12-31-2016	Adopt(T)	2-1-2017
333-008-0040	11-28-2016	Amend	1-1-2017	333-008-9910(T)	5-31-2017	Repeal	7-1-2017
333-008-0550	5-31-2017	Amend	7-1-2017	333-010-0405	12-12-2016	Amend	1-1-2017
333-008-0570	5-31-2017	Amend	7-1-2017	333-010-0415	12-12-2016	Amend	1-1-2017
333-008-0600	11-28-2016	Amend	1-1-2017	333-010-0435	12-12-2016	Amend	1-1-2017
333-008-0600	5-31-2017	Amend	7-1-2017	333-016-2035	12-1-2016	Adopt	1-1-2017
333-008-1020	11-28-2016	Amend	1-1-2017	333-016-2040	12-1-2016	Adopt	1-1-2017
333-008-1020	5-31-2017	Amend	7-1-2017	333-016-2040	2-1-2017	Amend	3-1-2017
333-008-1030	5-31-2017	Amend	7-1-2017	333-016-2050	12-1-2016	Adopt	1-1-2017
333-008-1070	5-31-2017	Amend	7-1-2017	333-016-2060	12-1-2016	Adopt	1-1-2017
333-008-1110	11-28-2016	Amend	1-1-2017	333-016-2060	2-1-2017	Amend	3-1-2017
333-008-1190	11-28-2016	Repeal	1-1-2017	333-016-2070	12-1-2016	Adopt	1-1-2017
333-008-1200	11-28-2016	Amend	1-1-2017	333-016-2070	2-1-2017	Amend	3-1-2017
333-008-1200	12-31-2016	Amend(T)	2-1-2017	333-016-2080	2-1-2017	Adopt	3-1-2017
333-008-1200	5-31-2017	Amend	7-1-2017	333-016-2090	12-1-2016	Adopt	1-1-2017
333-008-1200(T)	11-28-2016	Repeal	1-1-2017	333-023-0805	1-10-2017	Amend	2-1-2017
333-008-1200(T)	5-31-2017	Repeal	7-1-2017	333-023-0820	1-10-2017	Amend	2-1-2017
333-008-1205	5-31-2017	Amend	7-1-2017	333-023-0830	1-10-2017	Adopt	2-1-2017
333-008-1220	5-31-2017	Repeal	7-1-2017	333-028-0220	7-1-2017	Amend	2-1-2017
333-008-1225	11-28-2016	Repeal	1-1-2017	333-028-0230	7-1-2017	Amend	2-1-2017
333-008-1230	11-28-2016	Amend	1-1-2017	333-028-0234	7-1-2017	Adopt	2-1-2017
333-008-1230	12-31-2016	Amend(T)	2-1-2017	333-028-0238	7-1-2017	Adopt	2-1-2017
333-008-1230	5-31-2017	Amend	7-1-2017	333-028-0240	7-1-2017	Amend	2-1-2017
333-008-1230(T)	11-28-2016	Repeal	1-1-2017	333-028-0250	7-1-2017	Amend	2-1-2017

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333-046-0010	12-22-2016	Adopt	2-1-2017	333-070-0115	1-1-2017	Am. & Ren.	1-1-2017
333-046-0020	12-22-2016	Adopt	2-1-2017	333-070-0120	1-1-2017	Am. & Ren.	1-1-2017
333-046-0030	12-22-2016	Adopt	2-1-2017	333-070-0125	1-1-2017	Repeal	1-1-2017
333-046-0040	12-22-2016	Adopt	2-1-2017	333-070-0130	1-1-2017	Repeal	1-1-2017
333-046-0050	12-22-2016	Adopt	2-1-2017	333-070-0135	1-1-2017	Repeal	1-1-2017
333-046-0060	12-22-2016	Adopt	2-1-2017	333-070-0140	1-1-2017	Repeal	1-1-2017
333-046-0070	12-22-2016	Adopt	2-1-2017	333-070-0145	1-1-2017	Am. & Ren.	1-1-2017
333-046-0080	12-22-2016	Adopt	2-1-2017	333-070-0150	1-1-2017	Repeal	1-1-2017
333-046-0090	12-22-2016	Adopt	2-1-2017	333-070-0160	1-1-2017	Am. & Ren.	1-1-2017
333-046-0100	12-22-2016	Adopt	2-1-2017	333-070-0200	1-1-2017	Adopt	1-1-2017
333-046-0110	12-22-2016	Adopt	2-1-2017	333-102-0005	2-1-2017	Amend	3-1-2017
333-046-0120	12-22-2016	Adopt	2-1-2017	333-102-0015	2-1-2017	Amend	3-1-2017
333-046-0130	12-22-2016	Adopt	2-1-2017	333-102-0101	2-1-2017	Amend	3-1-2017
333-064-0100	12-2-2016	Amend(T)	1-1-2017	333-106-0325	2-1-2017	Amend	3-1-2017
333-064-0100	12-15-2016	Amend(T)	1-1-2017	333-125-0040	2-1-2017	Amend	3-1-2017
333-064-0100	5-31-2017	Amend	7-1-2017	333-125-0120	2-1-2017	Amend	3-1-2017
333-064-0100(T)	5-31-2017	Repeal	7-1-2017	333-250-0000	3-21-2017	Renumber	5-1-2017
333-064-0110	12-2-2016	Amend(T)	1-1-2017	333-250-0010	3-21-2017	Am. & Ren.	5-1-2017
333-064-0110	12-15-2016	Amend(T)	1-1-2017	333-250-0020	3-21-2017	Am. & Ren.	5-1-2017
333-064-0110	5-31-2017	Amend	7-1-2017	333-250-0030	3-21-2017	Am. & Ren.	5-1-2017
333-064-0110(T)	5-31-2017	Repeal	7-1-2017	333-250-0031	3-21-2017	Repeal	5-1-2017
333-068-0005	1-1-2017	Repeal	1-1-2017	333-250-0040	3-21-2017	Am. & Ren.	5-1-2017
333-068-0010	1-1-2017	Repeal	1-1-2017	333-250-0041	3-21-2017	Am. & Ren.	5-1-2017
333-068-0015	1-1-2017	Repeal	1-1-2017	333-250-0042	3-21-2017	Repeal	5-1-2017
333-068-0020	1-1-2017	Repeal	1-1-2017	333-250-0043	3-21-2017	Am. & Ren.	5-1-2017
333-068-0025	1-1-2017	Repeal	1-1-2017	333-250-0044	3-21-2017	Repeal	5-1-2017
333-068-0030	1-1-2017	Repeal	1-1-2017	333-250-0045	3-21-2017	Repeal	5-1-2017
333-068-0035	1-1-2017	Repeal	1-1-2017	333-250-0046	3-21-2017	Am. & Ren.	5-1-2017
333-068-0040	1-1-2017	Repeal	1-1-2017	333-250-0047	3-21-2017	Am. & Ren.	5-1-2017
333-068-0045	1-1-2017	Repeal	1-1-2017	333-250-0048	3-21-2017	Repeal	5-1-2017
333-068-0050	1-1-2017	Repeal	1-1-2017	333-250-0049	3-21-2017	Repeal	5-1-2017
333-068-0055	1-1-2017	Repeal	1-1-2017	333-250-0050	3-21-2017	Am. & Ren.	5-1-2017
333-068-0060	1-1-2017	Repeal	1-1-2017	333-250-0060	3-21-2017	Am. & Ren.	5-1-2017
333-068-0065	1-1-2017	Repeal	1-1-2017	333-250-0070	3-21-2017	Am. & Ren.	5-1-2017
333-069-0005	1-1-2017	Repeal	1-1-2017	333-250-0080	3-21-2017	Am. & Ren.	5-1-2017
333-069-0010	1-1-2017	Repeal	1-1-2017	333-250-0085	3-21-2017	Am. & Ren.	5-1-2017
333-069-0015	1-1-2017	Repeal	1-1-2017	333-250-0100	3-21-2017	Repeal	5-1-2017
333-069-0020	1-1-2017	Repeal	1-1-2017	333-250-0220	3-21-2017	Adopt	5-1-2017
333-069-0030	1-1-2017	Repeal	1-1-2017	333-250-0225	3-21-2017	Adopt	5-1-2017
333-069-0040	1-1-2017	Repeal	1-1-2017	333-250-0230	3-21-2017	Adopt	5-1-2017
333-069-0050	1-1-2017	Repeal	1-1-2017	333-250-0235	3-21-2017	Adopt	5-1-2017
333-069-0060	1-1-2017	Repeal	1-1-2017	333-250-0255	3-21-2017	Adopt	5-1-2017
333-069-0070	1-1-2017	Repeal	1-1-2017	333-250-0265	3-21-2017	Adopt	5-1-2017
333-069-0080	1-1-2017	Repeal	1-1-2017	333-250-0310	3-21-2017	Adopt	5-1-2017
333-069-0085	1-1-2017	Am. & Ren.	1-1-2017	333-250-0320	3-21-2017	Adopt	5-1-2017
333-069-0090	1-1-2017	Repeal	1-1-2017	333-250-0350	3-21-2017	Adopt	5-1-2017
333-069-0100	1-1-2017	Adopt	1-1-2017	333-250-0360	3-21-2017	Adopt	5-1-2017
333-069-0120	1-1-2017	Adopt	1-1-2017	333-250-0380	3-21-2017	Adopt	5-1-2017
333-070-0075	1-1-2017	Repeal	1-1-2017	333-250-0390	3-21-2017	Adopt	5-1-2017
333-070-0080	1-1-2017	Repeal	1-1-2017	333-250-0410	3-21-2017	Adopt	5-1-2017
333-070-0085	1-1-2017	Repeal	1-1-2017	333-265-0000	3-30-2017	Amend	5-1-2017
333-070-0090	1-1-2017	Repeal	1-1-2017	333-265-0010	3-30-2017	Amend	5-1-2017
333-070-0095	1-1-2017	Repeal	1-1-2017	333-265-0011	3-30-2017	Repeal	5-1-2017
333-070-0100	1-1-2017	Repeal	1-1-2017	333-265-0012	3-30-2017	Amend	5-1-2017
333-070-0105	1-1-2017	Repeal	1-1-2017	333-265-0014	3-30-2017	Amend	5-1-2017

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333-265-0018	3-30-2017	Amend	5-1-2017	340-090-0180	1-19-2017	Amend	3-1-2017
333-265-0020	3-30-2017	Amend	5-1-2017	340-090-0190	1-19-2017	Amend	3-1-2017
333-265-0022	3-30-2017	Amend	5-1-2017	340-090-0310	1-19-2017	Amend	3-1-2017
333-265-0023	3-30-2017	Amend	5-1-2017	340-090-0320	1-19-2017	Amend	3-1-2017
333-265-0024	3-30-2017	Amend	5-1-2017	340-090-0330	1-19-2017	Amend	3-1-2017
333-265-0025	3-30-2017	Amend	5-1-2017	340-090-0340	1-19-2017	Amend	3-1-2017
333-265-0030	3-30-2017	Amend	5-1-2017	340-090-0350	1-19-2017	Amend	3-1-2017
333-265-0040	3-30-2017	Amend	5-1-2017	340-090-0360	1-19-2017	Amend	3-1-2017
333-265-0050	3-30-2017	Amend	5-1-2017	340-090-0370	1-19-2017	Amend	3-1-2017
333-265-0056	3-30-2017	Amend	5-1-2017	340-090-0380	1-19-2017	Amend	3-1-2017
333-265-0060	3-30-2017	Amend	5-1-2017	340-090-0390	1-19-2017	Amend	3-1-2017
333-265-0070	3-30-2017	Amend	5-1-2017	340-090-0400	1-19-2017	Amend	3-1-2017
333-265-0080	3-30-2017	Amend	5-1-2017	340-090-0410	1-19-2017	Amend	3-1-2017
333-265-0083	3-30-2017	Amend	5-1-2017	340-090-0420	1-19-2017	Amend	3-1-2017
333-265-0085	3-30-2017	Amend	5-1-2017	340-090-0430	1-19-2017	Amend	3-1-2017
333-265-0087	3-30-2017	Amend	5-1-2017	340-090-0510	1-19-2017	Amend	3-1-2017
333-265-0090	3-30-2017	Amend	5-1-2017	340-143-0005	3-1-2017	Amend	3-1-2017
333-265-0100	3-30-2017	Am. & Ren.	5-1-2017	340-143-0010	3-1-2017	Amend	3-1-2017
333-265-0105	3-30-2017	Amend	5-1-2017	340-143-0050	3-1-2017	Amend	3-1-2017
333-265-0110	3-30-2017	Amend	5-1-2017	340-200-0040	1-19-2017	Amend	3-1-2017
333-265-0140	3-30-2017	Amend	5-1-2017	340-220-0030	1-19-2017	Amend	3-1-2017
333-265-0150	3-30-2017	Amend	5-1-2017	340-220-0040	1-19-2017	Amend	3-1-2017
333-265-0160	3-30-2017	Amend	5-1-2017	340-220-0050	1-19-2017	Amend	3-1-2017
333-265-0170	3-30-2017	Amend	5-1-2017	345-021-0010	3-8-2017	Amend	4-1-2017
333-510-0130	1-23-2017	Amend	3-1-2017	345-022-0000	3-8-2017	Amend	4-1-2017
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333-535-0086	12-23-2016	Amend	2-1-2017	350-010-0000	4-1-2017	Adopt	4-1-2017
334-001-0012	7-1-2017	Amend	7-1-2017	350-010-0010	4-1-2017	Adopt	4-1-2017
334-010-0005	7-1-2017	Amend	7-1-2017	350-010-0020	4-1-2017	Adopt	4-1-2017
334-010-0046	7-1-2017	Amend	7-1-2017	350-010-0030	4-1-2017	Adopt	4-1-2017
334-010-0050	7-1-2017	Amend	7-1-2017	350-010-0040	4-1-2017	Adopt	4-1-2017
339-010-0005	2-15-2017	Amend	3-1-2017	350-010-0050	4-1-2017	Adopt	4-1-2017
339-010-0005	3-13-2017	Amend	4-1-2017	350-081-0017	4-1-2017	Repeal	4-1-2017
339-010-0020	1-27-2017	Amend	3-1-2017	407-007-0210	12-1-2016	Amend	1-1-2017
339-010-0020	2-16-2017	Amend	4-1-2017	407-007-0210	3-15-2017	Amend(T)	4-1-2017
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340-090-0015	1-19-2017	Amend	3-1-2017	407-007-0250	3-15-2017	Amend(T)	4-1-2017
340-090-0020	1-19-2017	Amend	3-1-2017	407-007-0250(T)	12-1-2016	Repeal	1-1-2017
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340-090-0040	1-19-2017	Amend	3-1-2017	407-007-0279	3-15-2017	Amend(T)	4-1-2017
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340-090-0042	1-19-2017	Adopt	3-1-2017	407-007-0290	12-1-2016	Amend	1-1-2017
340-090-0045	1-19-2017	Repeal	3-1-2017	407-007-0290(T)	12-1-2016	Repeal	1-1-2017
340-090-0050	1-19-2017	Amend	3-1-2017	407-007-0320	12-1-2016	Amend	1-1-2017
340-090-0060	1-19-2017	Amend	3-1-2017	407-007-0320	3-15-2017	Amend(T)	4-1-2017
340-090-0068	1-19-2017	Adopt	3-1-2017	407-007-0320(T)	12-1-2016	Repeal	1-1-2017
340-090-0070	1-19-2017	Amend	3-1-2017	407-007-0330	12-1-2016	Amend	1-1-2017
340-090-0080	1-19-2017	Amend	3-1-2017	407-007-0330	3-15-2017	Amend(T)	4-1-2017
340-090-0090	1-19-2017	Amend	3-1-2017	407-007-0330(T)	12-1-2016	Repeal	1-1-2017
340-090-0100	1-19-2017	Amend	3-1-2017	407-007-0335	1-24-2017	Amend(T)	3-1-2017
340-090-0110	1-19-2017	Amend	3-1-2017	407-014-0200	5-15-2017	Amend(T)	6-1-2017
340-090-0120	1-19-2017	Amend	3-1-2017	407-014-0200	5-16-2017	Amend	7-1-2017
340-090-0130	1-19-2017	Amend	3-1-2017	407-014-0200(T)	5-16-2017	Repeal	7-1-2017

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407-014-0205(T)	5-16-2017	Repeal	7-1-2017	410-121-0040(T)	6-1-2017	Suspend	5-1-2017
407-045-0800	12-1-2016	Amend	1-1-2017	410-123-1220	1-1-2017	Amend(T)	2-1-2017
407-045-0810	12-1-2016	Repeal	1-1-2017	410-123-1260	1-1-2017	Amend(T)	2-1-2017
407-045-0820	12-1-2016	Amend	1-1-2017	410-125-0085	1-1-2017	Amend	2-1-2017
407-045-0825	12-1-2016	Adopt	1-1-2017	410-125-0085(T)	1-1-2017	Repeal	2-1-2017
407-045-0830	12-1-2016	Repeal	1-1-2017	410-125-0360	1-1-2017	Amend	2-1-2017
407-045-0850	12-1-2016	Repeal	1-1-2017	410-125-0360(T)	1-1-2017	Repeal	2-1-2017
407-045-0860	12-1-2016	Repeal	1-1-2017	410-129-0020	1-1-2017	Amend(T)	1-1-2017
407-045-0870	12-1-2016	Repeal	1-1-2017	410-129-0020	6-9-2017	Amend	7-1-2017
407-045-0880	12-1-2016	Repeal	1-1-2017	410-129-0020(T)	6-9-2017	Repeal	7-1-2017
407-045-0885	12-1-2016	Adopt	1-1-2017	410-129-0040	1-1-2017	Amend(T)	1-1-2017
407-045-0886	12-1-2016	Adopt	1-1-2017	410-129-0040	6-9-2017	Repeal	7-1-2017
407-045-0887	12-1-2016	Adopt	1-1-2017	410-129-0070	1-1-2017	Amend(T)	1-1-2017
407-045-0890	12-1-2016	Amend	1-1-2017	410-129-0070	6-9-2017	Amend	7-1-2017
407-045-0895	12-1-2016	Adopt	1-1-2017	410-129-0070(T)	6-9-2017	Repeal	7-1-2017
407-045-0900	12-1-2016	Repeal	1-1-2017	410-129-0100	6-9-2017	Amend	7-1-2017
407-045-0910	12-1-2016	Amend	1-1-2017	410-129-0190	1-1-2017	Suspend	1-1-2017
407-045-0920	12-1-2016	Repeal	1-1-2017	410-129-0190	6-9-2017	Repeal	7-1-2017
407-045-0930	12-1-2016	Repeal	1-1-2017	410-130-0015	5-1-2017	Amend(T)	6-1-2017
407-045-0940	12-1-2016	Amend	1-1-2017	410-130-0015	5-25-2017	Amend(T)	7-1-2017
407-045-0940	1-13-2017	Amend(T)	2-1-2017	410-131-0040	1-1-2017	Amend(T)	1-1-2017
407-045-0950	12-1-2016	Amend	1-1-2017	410-131-0040	6-9-2017	Amend	7-1-2017
407-045-0955	12-1-2016	Adopt	1-1-2017	410-131-0040(T)	6-9-2017	Repeal	7-1-2017
407-045-0960	12-1-2016	Repeal	1-1-2017	410-131-0080	1-1-2017	Amend(T)	1-1-2017
407-045-0970	12-1-2016	Repeal	1-1-2017	410-131-0080	6-9-2017	Amend	7-1-2017
407-045-0980	12-1-2016	Repeal	1-1-2017	410-131-0080(T)	6-9-2017	Repeal	7-1-2017
409-025-0120	5-3-2017	Amend	6-1-2017	410-131-0100	1-1-2017	Amend(T)	1-1-2017
409-055-0030	12-22-2016	Amend	2-1-2017	410-131-0100	6-9-2017	Repeal	7-1-2017
409-055-0030(T)	12-22-2016	Repeal	2-1-2017	410-131-0120	1-1-2017	Amend(T)	1-1-2017
409-055-0040	12-22-2016	Amend	2-1-2017	410-131-0120	6-9-2017	Amend	7-1-2017
409-055-0045	12-22-2016	Amend	2-1-2017	410-131-0120(T)	6-9-2017	Repeal	7-1-2017
409-055-0050	12-22-2016	Amend	2-1-2017	410-138-0000	1-1-2017	Amend	2-1-2017
409-060-0110	12-22-2016	Amend	2-1-2017	410-138-0000	1-13-2017	Amend(T)	2-1-2017
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409-060-0140	12-22-2016	Amend	2-1-2017	410-138-0000	4-1-2017	Amend	5-1-2017
409-060-0150	12-22-2016	Amend	2-1-2017	410-138-0000(T)	4-1-2017	Repeal	5-1-2017
409-110-0025	11-29-2016	Renumber	1-1-2017	410-138-0005	1-1-2017	Amend	2-1-2017
409-110-0030	11-29-2016	Renumber	1-1-2017	410-138-0005	1-13-2017	Amend(T)	2-1-2017
409-110-0035	11-29-2016	Renumber	1-1-2017	410-138-0005	2-10-2017	Amend(T)	3-1-2017
409-110-0040	11-29-2016	Renumber	1-1-2017	410-138-0005	4-1-2017	Amend	5-1-2017
409-110-0045	11-29-2016	Renumber	1-1-2017	410-138-0005(T)	4-1-2017	Repeal	5-1-2017
410-120-0000	1-1-2017	Amend	2-1-2017	410-138-0007	1-1-2017	Amend	2-1-2017
410-120-0000(T)	1-1-2017	Repeal	2-1-2017	410-138-0007	1-13-2017	Amend(T)	2-1-2017
410-120-0006	3-1-2017	Amend(T)	4-1-2017	410-138-0007	2-10-2017	Amend(T)	3-1-2017
410-120-1230	1-1-2017	Amend	2-1-2017	410-138-0007	4-1-2017	Amend	5-1-2017
410-120-1340	5-26-2017	Amend(T)	7-1-2017	410-138-0007(T)	4-1-2017	Repeal	5-1-2017
410-121-0030	12-1-2016	Amend	1-1-2017	410-138-0009	1-1-2017	Amend	2-1-2017
410-121-0030	1-1-2017	Amend(T)	2-1-2017	410-138-0009	1-13-2017	Amend(T)	2-1-2017
410-121-0030	5-1-2017	Amend(T)	6-1-2017	410-138-0009	2-10-2017	Amend(T)	3-1-2017
410-121-0030(T)	12-1-2016	Repeal	1-1-2017	410-138-0009	4-1-2017	Amend	5-1-2017
410-121-0040	12-1-2016	Amend	1-1-2017	410-138-0009(T)	4-1-2017	Repeal	5-1-2017
410-121-0040	1-1-2017	Amend(T)	2-1-2017	410-138-0020	1-1-2017	Amend	2-1-2017
410-121-0040	2-21-2017	Amend(T)	4-1-2017	410-138-0020	1-13-2017	Amend(T)	2-1-2017
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410-138-0040	1-13-2017	Amend(T)	2-1-2017	410-165-0020	6-2-2017	Amend	7-1-2017
410-138-0040	2-10-2017	Amend(T)	3-1-2017	410-165-0020(T)	6-2-2017	Repeal	7-1-2017
410-138-0040	4-1-2017	Amend	5-1-2017	410-165-0040	6-2-2017	Amend	7-1-2017
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410-138-0060	1-13-2017	Amend(T)	2-1-2017	410-165-0060(T)	6-2-2017	Repeal	7-1-2017
410-138-0060	2-10-2017	Amend(T)	3-1-2017	410-165-0080	2-2-2017	Amend(T)	3-1-2017
410-138-0060	4-1-2017	Amend	5-1-2017	410-165-0080	6-2-2017	Amend	7-1-2017
410-138-0060(T)	4-1-2017	Repeal	5-1-2017	410-165-0080(T)	6-2-2017	Repeal	7-1-2017
410-138-0080	1-1-2017	Amend	2-1-2017	410-170-0110	11-29-2016	Amend	1-1-2017
410-138-0080	1-13-2017	Amend(T)	2-1-2017	410-170-0110(T)	11-29-2016	Repeal	1-1-2017
410-138-0080	2-10-2017	Amend(T)	3-1-2017	410-172-0650	4-4-2017	Amend	5-1-2017
410-138-0080	4-1-2017	Amend	5-1-2017	410-172-0650(T)	4-4-2017	Repeal	5-1-2017
410-138-0080(T)	4-1-2017	Repeal	5-1-2017	410-172-0760	4-4-2017	Amend	5-1-2017
410-138-0390	1-1-2017	Amend	2-1-2017	410-172-0760(T)	4-4-2017	Repeal	5-1-2017
410-138-0390	1-13-2017	Amend(T)	2-1-2017	410-172-0770	4-4-2017	Amend	5-1-2017
410-138-0390	2-10-2017	Amend(T)	3-1-2017	410-172-0770(T)	4-4-2017	Repeal	5-1-2017
410-138-0390	4-1-2017	Amend	5-1-2017	410-200-0315	3-1-2017	Amend(T)	4-1-2017
410-138-0390(T)	4-1-2017	Repeal	5-1-2017	410-200-0315	5-1-2017	Amend	6-1-2017
410-138-0420	1-1-2017	Amend	2-1-2017	410-200-0315(T)	5-1-2017	Repeal	6-1-2017
410-138-0420	1-13-2017	Amend(T)	2-1-2017	411-004-0040	12-28-2016	Amend	2-1-2017
410-138-0420	2-10-2017	Amend(T)	3-1-2017	411-019-0000	3-1-2017	Adopt	4-1-2017
410-138-0420	4-1-2017	Amend	5-1-2017	411-019-0010	3-1-2017	Adopt	4-1-2017
410-138-0420(T)	4-1-2017	Repeal	5-1-2017	411-019-0020	3-1-2017	Adopt	4-1-2017
410-141-0520	12-1-2016	Amend	1-1-2017	411-019-0030	3-1-2017	Adopt	4-1-2017
410-141-0520	1-1-2017	Amend(T)	2-1-2017	411-027-0170	12-28-2016	Amend	1-1-2017
410-141-0520	3-1-2017	Amend	4-1-2017	411-030-0033	12-28-2016	Amend	2-1-2017
410-141-0520(T)	12-1-2016	Repeal	1-1-2017	411-030-0068	12-28-2016	Amend	2-1-2017
410-141-0520(T)	3-1-2017	Repeal	4-1-2017	411-030-0070	12-28-2016	Amend	2-1-2017
410-141-3015	1-1-2017	Amend	2-1-2017	411-030-0090	5-30-2017	Am. & Ren.	7-1-2017
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410-141-3015(T)	1-1-2017	Repeal	2-1-2017	411-033-0010	5-30-2017	Adopt	7-1-2017
410-141-3015(T)	1-13-2017	Repeal	2-1-2017	411-033-0030	5-30-2017	Adopt	7-1-2017
410-141-3070	1-1-2017	Amend	2-1-2017	411-050-0615	5-1-2017	Amend(T)	6-1-2017
410-141-3145	1-1-2017	Amend	2-1-2017	411-050-0650	5-1-2017	Amend(T)	6-1-2017
410-141-3145	1-13-2017	Amend	2-1-2017	411-050-0665	5-1-2017	Amend(T)	6-1-2017
410-141-3145(T)	1-1-2017	Repeal	2-1-2017	411-054-0105	5-1-2017	Amend(T)	6-1-2017
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410-141-3160	6-29-2017	Amend	7-1-2017	411-305-0010	1-1-2017	Am. & Ren.	2-1-2017
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410-141-3260	1-13-2017	Amend	2-1-2017	411-305-0025	1-1-2017	Am. & Ren.	2-1-2017
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410-141-3260(T)	1-13-2017	Repeal	2-1-2017	411-305-0030	1-1-2017	Am. & Ren.	2-1-2017
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410-141-3300	1-1-2017	Amend	2-1-2017	411-305-0080	1-1-2017	Am. & Ren.	2-1-2017
410-141-3300	1-13-2017	Amend	2-1-2017	411-305-0090	1-1-2017	Am. & Ren.	2-1-2017
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410-141-3300(T)	1-13-2017	Repeal	2-1-2017	411-305-0110	1-1-2017	Repeal	2-1-2017
410-141-3395	1-1-2017	Amend	2-1-2017	411-305-0115	1-1-2017	Repeal	2-1-2017
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411-317-0000	5-1-2017	Amend(T)	5-1-2017	413-015-0212(T)	12-1-2016	Repeal	1-1-2017
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411-317-0000(T)	6-5-2017	Repeal	7-1-2017	413-015-0300	12-1-2016	Amend	1-1-2017
411-323-0050	12-16-2016	Amend(T)	2-1-2017	413-015-0300(T)	12-1-2016	Repeal	1-1-2017
411-323-0050	4-22-2017	Amend	6-1-2017	413-015-0409	12-1-2016	Amend	1-1-2017
411-323-0050(T)	12-16-2016	Suspend	2-1-2017	413-015-0409(T)	12-1-2016	Repeal	1-1-2017
411-325-0020	2-28-2017	Amend	4-1-2017	413-015-0415	2-7-2017	Amend(T)	3-1-2017
411-328-0560	2-28-2017	Amend	4-1-2017	413-015-0420	12-1-2016	Amend	1-1-2017
411-345-0020	2-28-2017	Amend	4-1-2017	413-015-0420(T)	12-1-2016	Repeal	1-1-2017
411-360-0020	2-28-2017	Amend	4-1-2017	413-015-0432	2-7-2017	Amend(T)	3-1-2017
411-360-0140	2-15-2017	Amend(T)	3-1-2017	413-015-0440	12-1-2016	Amend	1-1-2017
411-360-0140	6-9-2017	Amend	7-1-2017	413-015-0440(T)	12-1-2016	Repeal	1-1-2017
411-360-0140(T)	6-9-2017	Repeal	7-1-2017	413-015-0445	12-1-2016	Amend	1-1-2017
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411-375-0020	2-28-2017	Amend	4-1-2017	413-015-0450	12-1-2016	Amend	1-1-2017
411-375-0035	2-28-2017	Amend	4-1-2017	413-015-0450(T)	12-1-2016	Repeal	1-1-2017
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411-375-0055	2-28-2017	Amend	4-1-2017	413-015-0620(T)	12-1-2016	Repeal	1-1-2017
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413-040-0310	2-7-2017	Amend(T)	3-1-2017	413-090-0055(T)	12-1-2016	Repeal	1-1-2017
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413-070-0000	2-7-2017	Amend(T)	3-1-2017	413-090-0065(T)	12-1-2016	Repeal	1-1-2017
413-070-0010	2-7-2017	Amend(T)	3-1-2017	413-090-0070	12-1-2016	Amend	1-1-2017
413-070-0072	2-7-2017	Amend(T)	3-1-2017	413-090-0070(T)	12-1-2016	Repeal	1-1-2017
413-070-0100	2-7-2017	Suspend	3-1-2017	413-090-0075	12-1-2016	Amend	1-1-2017
413-070-0130	2-7-2017	Suspend	3-1-2017	413-090-0075(T)	12-1-2016	Repeal	1-1-2017
413-070-0140	2-7-2017	Suspend	3-1-2017	413-090-0080	12-1-2016	Amend	1-1-2017
413-070-0150	2-7-2017	Suspend	3-1-2017	413-090-0080(T)	12-1-2016	Repeal	1-1-2017
413-070-0160	2-7-2017	Suspend	3-1-2017	413-090-0090	12-1-2016	Amend	1-1-2017
413-070-0170	2-7-2017	Suspend	3-1-2017	413-090-0090(T)	12-1-2016	Repeal	1-1-2017
413-070-0180	2-7-2017	Suspend	3-1-2017	413-100-0020	2-7-2017	Amend(T)	3-1-2017
413-070-0190	2-7-2017	Suspend	3-1-2017	413-100-0240	2-7-2017	Amend(T)	3-1-2017
413-070-0200	2-7-2017	Suspend	3-1-2017	413-110-0000	2-7-2017	Amend(T)	3-1-2017
413-070-0210	2-7-2017	Suspend	3-1-2017	413-110-0280	1-1-2017	Repeal	2-1-2017
413-070-0220	2-7-2017	Suspend	3-1-2017	413-110-0282	1-1-2017	Repeal	2-1-2017
413-070-0230	2-7-2017	Suspend	3-1-2017	413-110-0286	1-1-2017	Repeal	2-1-2017
413-070-0240	2-7-2017	Suspend	3-1-2017	413-110-0288	1-1-2017	Repeal	2-1-2017
413-070-0250	2-7-2017	Suspend	3-1-2017	413-110-0290	1-1-2017	Repeal	2-1-2017
413-070-0260	2-7-2017	Suspend	3-1-2017	413-110-0291	1-1-2017	Repeal	2-1-2017
413-070-0512	2-7-2017	Amend(T)	3-1-2017	413-110-0292	1-1-2017	Repeal	2-1-2017
413-070-0516	1-1-2017	Amend	2-1-2017	413-110-0293	1-1-2017	Repeal	2-1-2017
413-070-0516	2-7-2017	Amend(T)	3-1-2017	413-110-0295	1-1-2017	Repeal	2-1-2017
413-070-0518	1-1-2017	Amend	2-1-2017	413-110-0297	1-1-2017	Repeal	2-1-2017
413-070-0518	1-19-2017	Amend	3-1-2017	413-110-0299	1-1-2017	Repeal	2-1-2017
413-070-0519	2-7-2017	Amend(T)	3-1-2017	413-110-0300	2-7-2017	Amend(T)	3-1-2017
413-070-0625	2-7-2017	Amend(T)	3-1-2017	413-115-0000	2-7-2017	Adopt(T)	3-1-2017
413-070-0670	1-1-2017	Amend	2-1-2017	413-115-0010	2-7-2017	Adopt(T)	3-1-2017
413-070-0900	1-1-2017	Amend	2-1-2017	413-115-0020	2-7-2017	Adopt(T)	3-1-2017
413-070-0900(T)	1-1-2017	Repeal	2-1-2017	413-115-0030	2-7-2017	Adopt(T)	3-1-2017
413-070-0917	1-1-2017	Amend	2-1-2017	413-115-0030	5-12-2017	Adopt(T)	6-1-2017
413-070-0917(T)	1-1-2017	Repeal	2-1-2017	413-115-0030(T)	5-12-2017	Suspend	6-1-2017
413-070-0959	1-1-2017	Amend	2-1-2017	413-115-0040	2-7-2017	Adopt(T)	3-1-2017
413-070-0959(T)	1-1-2017	Repeal	2-1-2017	413-115-0050	2-7-2017	Adopt(T)	3-1-2017
413-070-1020	1-1-2017	Amend	2-1-2017	413-115-0050	5-12-2017	Adopt(T)	6-1-2017
413-070-1050	2-7-2017	Amend(T)	3-1-2017	413-115-0050(T)	5-12-2017	Suspend	6-1-2017
413-080-0050	12-1-2016	Amend	1-1-2017	413-115-0060	2-7-2017	Adopt(T)	3-1-2017
413-080-0050	2-7-2017	Amend(T)	3-1-2017	413-115-0070	2-7-2017	Adopt(T)	3-1-2017
413-080-0050(T)	12-1-2016	Repeal	1-1-2017	413-115-0080	2-7-2017	Adopt(T)	3-1-2017
413-080-0051	12-1-2016	Adopt	1-1-2017	413-115-0090	2-7-2017	Adopt(T)	3-1-2017
413-080-0051(T)	12-1-2016	Repeal	1-1-2017	413-115-0100	2-7-2017	Adopt(T)	3-1-2017
413-080-0052	12-1-2016	Amend	1-1-2017	413-115-0110	2-7-2017	Adopt(T)	3-1-2017
413-080-0052(T)	12-1-2016	Repeal	1-1-2017	413-115-0120	2-7-2017	Adopt(T)	3-1-2017
413-080-0053	1-1-2017	Amend	2-1-2017	413-115-0120	5-12-2017	Adopt(T)	6-1-2017
413-080-0053(T)	1-1-2017	Repeal	2-1-2017	413-115-0120(T)	5-12-2017	Suspend	6-1-2017
413-080-0054	12-1-2016	Amend	1-1-2017	413-115-0130	2-7-2017	Adopt(T)	3-1-2017
413-080-0054(T)	12-1-2016	Repeal	1-1-2017	413-115-0140	2-7-2017	Adopt(T)	3-1-2017
413-080-0059	12-1-2016	Amend	1-1-2017	413-115-0150	2-7-2017	Adopt(T)	3-1-2017
413-080-0059(T)	12-1-2016	Repeal	1-1-2017	413-120-0000	2-7-2017	Amend(T)	3-1-2017
413-080-0062	1-1-2017	Amend	2-1-2017	413-120-0020	2-7-2017	Amend(T)	3-1-2017
413-080-0062(T)	1-1-2017	Repeal	2-1-2017	413-120-0021	2-7-2017	Amend(T)	3-1-2017
413-080-0070	12-1-2016	Adopt	1-1-2017	413-120-0025	2-7-2017	Amend(T)	3-1-2017
413-080-0070(T)	12-1-2016	Repeal	1-1-2017	413-120-0057	2-7-2017	Amend(T)	3-1-2017
413-090-0000	12-1-2016	Amend	1-1-2017	413-120-0060	2-7-2017	Amend(T)	3-1-2017

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413-120-0175	2-7-2017	Amend(T)	3-1-2017	413-215-0106(T)	12-1-2016	Repeal	1-1-2017
413-120-0625	2-7-2017	Amend(T)	3-1-2017	413-215-0111	12-1-2016	Amend	1-1-2017
413-120-0730	2-7-2017	Amend(T)	3-1-2017	413-215-0111(T)	12-1-2016	Repeal	1-1-2017
413-120-0750	2-7-2017	Amend(T)	3-1-2017	413-215-0116	12-1-2016	Amend	1-1-2017
413-120-0760	2-7-2017	Amend(T)	3-1-2017	413-215-0116(T)	12-1-2016	Repeal	1-1-2017
413-120-0870	2-7-2017	Amend(T)	3-1-2017	413-215-0121	12-1-2016	Amend	1-1-2017
413-120-0880	2-7-2017	Amend(T)	3-1-2017	413-215-0121(T)	12-1-2016	Repeal	1-1-2017
413-120-0925	2-7-2017	Amend(T)	3-1-2017	413-215-0126	12-1-2016	Amend	1-1-2017
413-120-0950	2-7-2017	Amend(T)	3-1-2017	413-215-0126(T)	12-1-2016	Repeal	1-1-2017
413-200-0260	2-7-2017	Amend(T)	3-1-2017	413-215-0131	12-1-2016	Amend	1-1-2017
413-200-0306	2-7-2017	Amend(T)	3-1-2017	413-215-0131(T)	12-1-2016	Repeal	1-1-2017
413-215-0000	12-1-2016	Adopt	1-1-2017	413-215-0201	12-1-2016	Amend	1-1-2017
413-215-0000	2-7-2017	Amend(T)	3-1-2017	413-215-0201(T)	12-1-2016	Repeal	1-1-2017
413-215-0000(T)	12-1-2016	Repeal	1-1-2017	413-215-0206	12-1-2016	Repeal	1-1-2017
413-215-0001	12-1-2016	Amend	1-1-2017	413-215-0211	12-1-2016	Amend	1-1-2017
413-215-0001(T)	12-1-2016	Repeal	1-1-2017	413-215-0211(T)	12-1-2016	Repeal	1-1-2017
413-215-0006	12-1-2016	Repeal	1-1-2017	413-215-0216	12-1-2016	Amend	1-1-2017
413-215-0011	12-1-2016	Amend	1-1-2017	413-215-0216(T)	12-1-2016	Repeal	1-1-2017
413-215-0011(T)	12-1-2016	Repeal	1-1-2017	413-215-0218	12-1-2016	Adopt	1-1-2017
413-215-0016	12-1-2016	Amend	1-1-2017	413-215-0221	12-1-2016	Amend	1-1-2017
413-215-0016(T)	12-1-2016	Repeal	1-1-2017	413-215-0221(T)	12-1-2016	Repeal	1-1-2017
413-215-0021	12-1-2016	Amend	1-1-2017	413-215-0226	12-1-2016	Amend	1-1-2017
413-215-0021(T)	12-1-2016	Repeal	1-1-2017	413-215-0226(T)	12-1-2016	Repeal	1-1-2017
413-215-0026	12-1-2016	Amend	1-1-2017	413-215-0231	12-1-2016	Amend	1-1-2017
413-215-0026(T)	12-1-2016	Repeal	1-1-2017	413-215-0231(T)	12-1-2016	Repeal	1-1-2017
413-215-0031	12-1-2016	Amend	1-1-2017	413-215-0236	12-1-2016	Amend	1-1-2017
413-215-0031(T)	12-1-2016	Repeal	1-1-2017	413-215-0236(T)	12-1-2016	Repeal	1-1-2017
413-215-0036	12-1-2016	Amend	1-1-2017	413-215-0241	12-1-2016	Amend	1-1-2017
413-215-0036(T)	12-1-2016	Repeal	1-1-2017	413-215-0241(T)	12-1-2016	Repeal	1-1-2017
413-215-0041	12-1-2016	Amend	1-1-2017	413-215-0246	12-1-2016	Amend	1-1-2017
413-215-0041(T)	12-1-2016	Repeal	1-1-2017	413-215-0246(T)	12-1-2016	Repeal	1-1-2017
413-215-0046	12-1-2016	Amend	1-1-2017	413-215-0251	12-1-2016	Amend	1-1-2017
413-215-0046(T)	12-1-2016	Repeal	1-1-2017	413-215-0251(T)	12-1-2016	Repeal	1-1-2017
413-215-0051	12-1-2016	Amend	1-1-2017	413-215-0256	12-1-2016	Repeal	1-1-2017
413-215-0051(T)	12-1-2016	Repeal	1-1-2017	413-215-0261	12-1-2016	Amend	1-1-2017
413-215-0056	12-1-2016	Amend	1-1-2017	413-215-0261(T)	12-1-2016	Repeal	1-1-2017
413-215-0056(T)	12-1-2016	Repeal	1-1-2017	413-215-0266	12-1-2016	Amend	1-1-2017
413-215-0061	12-1-2016	Amend	1-1-2017	413-215-0266(T)	12-1-2016	Repeal	1-1-2017
413-215-0061(T)	12-1-2016	Repeal	1-1-2017	413-215-0271	12-1-2016	Amend	1-1-2017
413-215-0066	12-1-2016	Amend	1-1-2017	413-215-0271(T)	12-1-2016	Repeal	1-1-2017
413-215-0066(T)	12-1-2016	Repeal	1-1-2017	413-215-0276	12-1-2016	Amend	1-1-2017
413-215-0071	12-1-2016	Amend	1-1-2017	413-215-0276(T)	12-1-2016	Repeal	1-1-2017
413-215-0071(T)	12-1-2016	Repeal	1-1-2017	413-215-0301	12-1-2016	Amend	1-1-2017
413-215-0076	12-1-2016	Amend	1-1-2017	413-215-0301(T)	12-1-2016	Repeal	1-1-2017
413-215-0076(T)	12-1-2016	Repeal	1-1-2017	413-215-0306	12-1-2016	Repeal	1-1-2017
413-215-0081	12-1-2016	Amend	1-1-2017	413-215-0311	12-1-2016	Amend	1-1-2017
413-215-0081	2-7-2017	Amend(T)	3-1-2017	413-215-0311(T)	12-1-2016	Repeal	1-1-2017
413-215-0081(T)	12-1-2016	Repeal	1-1-2017	413-215-0313	12-1-2016	Amend	1-1-2017
413-215-0086	12-1-2016	Amend	1-1-2017	413-215-0313(T)	12-1-2016	Repeal	1-1-2017
413-215-0086(T)	12-1-2016	Repeal	1-1-2017	413-215-0316	12-1-2016	Amend	1-1-2017
413-215-0091	12-1-2016	Amend	1-1-2017	413-215-0316(T)	12-1-2016	Repeal	1-1-2017
413-215-0091(T)	12-1-2016	Repeal	1-1-2017	413-215-0318	12-1-2016	Adopt	1-1-2017
413-215-0096	12-1-2016	Repeal	1-1-2017	413-215-0321	12-1-2016	Amend	1-1-2017
413-215-0101	12-1-2016	Amend	1-1-2017	413-215-0321(T)	12-1-2016	Repeal	1-1-2017
413-215-0101(T)	12-1-2016	Repeal	1-1-2017	413-215-0326	12-1-2016	Amend	1-1-2017

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413-215-0331	12-1-2016	Amend	1-1-2017	413-215-0461(T)	12-1-2016	Repeal	1-1-2017
413-215-0331(T)	12-1-2016	Repeal	1-1-2017	413-215-0466	12-1-2016	Amend	1-1-2017
413-215-0336	12-1-2016	Amend	1-1-2017	413-215-0466(T)	12-1-2016	Repeal	1-1-2017
413-215-0336(T)	12-1-2016	Repeal	1-1-2017	413-215-0471	12-1-2016	Amend	1-1-2017
413-215-0341	12-1-2016	Amend	1-1-2017	413-215-0471(T)	12-1-2016	Repeal	1-1-2017
413-215-0341(T)	12-1-2016	Repeal	1-1-2017	413-215-0476	12-1-2016	Amend	1-1-2017
413-215-0346	12-1-2016	Repeal	1-1-2017	413-215-0476(T)	12-1-2016	Repeal	1-1-2017
413-215-0349	12-1-2016	Amend	1-1-2017	413-215-0481	12-1-2016	Amend	1-1-2017
413-215-0349(T)	12-1-2016	Repeal	1-1-2017	413-215-0481(T)	12-1-2016	Repeal	1-1-2017
413-215-0351	12-1-2016	Amend	1-1-2017	413-215-0501	12-1-2016	Amend	1-1-2017
413-215-0351(T)	12-1-2016	Repeal	1-1-2017	413-215-0501(T)	12-1-2016	Repeal	1-1-2017
413-215-0356	12-1-2016	Amend	1-1-2017	413-215-0506	12-1-2016	Repeal	1-1-2017
413-215-0356(T)	12-1-2016	Repeal	1-1-2017	413-215-0511	12-1-2016	Amend	1-1-2017
413-215-0361	12-1-2016	Amend	1-1-2017	413-215-0511(T)	12-1-2016	Repeal	1-1-2017
413-215-0361(T)	12-1-2016	Repeal	1-1-2017	413-215-0516	12-1-2016	Amend	1-1-2017
413-215-0366	12-1-2016	Amend	1-1-2017	413-215-0516(T)	12-1-2016	Repeal	1-1-2017
413-215-0366(T)	12-1-2016	Repeal	1-1-2017	413-215-0521	12-1-2016	Amend	1-1-2017
413-215-0371	12-1-2016	Amend	1-1-2017	413-215-0521(T)	12-1-2016	Repeal	1-1-2017
413-215-0371(T)	12-1-2016	Repeal	1-1-2017	413-215-0526	12-1-2016	Amend	1-1-2017
413-215-0376	12-1-2016	Amend	1-1-2017	413-215-0526(T)	12-1-2016	Repeal	1-1-2017
413-215-0376(T)	12-1-2016	Repeal	1-1-2017	413-215-0531	12-1-2016	Amend	1-1-2017
413-215-0381	12-1-2016	Amend	1-1-2017	413-215-0531(T)	12-1-2016	Repeal	1-1-2017
413-215-0381(T)	12-1-2016	Repeal	1-1-2017	413-215-0536	12-1-2016	Amend	1-1-2017
413-215-0386	12-1-2016	Amend	1-1-2017	413-215-0536(T)	12-1-2016	Repeal	1-1-2017
413-215-0386(T)	12-1-2016	Repeal	1-1-2017	413-215-0541	12-1-2016	Amend	1-1-2017
413-215-0391	12-1-2016	Amend	1-1-2017	413-215-0541(T)	12-1-2016	Repeal	1-1-2017
413-215-0391(T)	12-1-2016	Repeal	1-1-2017	413-215-0546	12-1-2016	Amend	1-1-2017
413-215-0396	12-1-2016	Amend	1-1-2017	413-215-0546(T)	12-1-2016	Repeal	1-1-2017
413-215-0396(T)	12-1-2016	Repeal	1-1-2017	413-215-0551	12-1-2016	Amend	1-1-2017
413-215-0401	12-1-2016	Amend	1-1-2017	413-215-0551(T)	12-1-2016	Repeal	1-1-2017
413-215-0401(T)	12-1-2016	Repeal	1-1-2017	413-215-0554	12-1-2016	Amend	1-1-2017
413-215-0406	12-1-2016	Repeal	1-1-2017	413-215-0554(T)	12-1-2016	Repeal	1-1-2017
413-215-0411	12-1-2016	Amend	1-1-2017	413-215-0556	12-1-2016	Amend	1-1-2017
413-215-0411(T)	12-1-2016	Repeal	1-1-2017	413-215-0556(T)	12-1-2016	Repeal	1-1-2017
413-215-0416	12-1-2016	Amend	1-1-2017	413-215-0561	12-1-2016	Amend	1-1-2017
413-215-0416(T)	12-1-2016	Repeal	1-1-2017	413-215-0561(T)	12-1-2016	Repeal	1-1-2017
413-215-0421	12-1-2016	Amend	1-1-2017	413-215-0566	12-1-2016	Amend	1-1-2017
413-215-0421(T)	12-1-2016	Repeal	1-1-2017	413-215-0566(T)	12-1-2016	Repeal	1-1-2017
413-215-0426	12-1-2016	Amend	1-1-2017	413-215-0571	12-1-2016	Amend	1-1-2017
413-215-0426	2-7-2017	Amend(T)	3-1-2017	413-215-0571(T)	12-1-2016	Repeal	1-1-2017
413-215-0426(T)	12-1-2016	Repeal	1-1-2017	413-215-0576	12-1-2016	Amend	1-1-2017
413-215-0431	12-1-2016	Amend	1-1-2017	413-215-0576(T)	12-1-2016	Repeal	1-1-2017
413-215-0431	2-7-2017	Amend(T)	3-1-2017	413-215-0581	12-1-2016	Amend	1-1-2017
413-215-0431(T)	12-1-2016	Repeal	1-1-2017	413-215-0581(T)	12-1-2016	Repeal	1-1-2017
413-215-0436	12-1-2016	Amend	1-1-2017	413-215-0586	12-1-2016	Amend	1-1-2017
413-215-0436(T)	12-1-2016	Repeal	1-1-2017	413-215-0586(T)	12-1-2016	Repeal	1-1-2017
413-215-0441	12-1-2016	Amend	1-1-2017	413-215-0601	12-1-2016	Amend	1-1-2017
413-215-0441	2-7-2017	Amend(T)	3-1-2017	413-215-0601(T)	12-1-2016	Repeal	1-1-2017
413-215-0441(T)	12-1-2016	Repeal	1-1-2017	413-215-0606	12-1-2016	Repeal	1-1-2017
413-215-0446	12-1-2016	Amend	1-1-2017	413-215-0611	12-1-2016	Amend	1-1-2017
413-215-0446(T)	12-1-2016	Repeal	1-1-2017	413-215-0611(T)	12-1-2016	Repeal	1-1-2017
413-215-0451	12-1-2016	Amend	1-1-2017	413-215-0616	12-1-2016	Amend	1-1-2017
413-215-0451(T)	12-1-2016	Repeal	1-1-2017	413-215-0616(T)	12-1-2016	Repeal	1-1-2017
413-215-0456	12-1-2016	Amend	1-1-2017	413-215-0618	12-1-2016	Adopt	1-1-2017
413-215-0456(T)	12-1-2016	Repeal	1-1-2017	413-215-0621	12-1-2016	Amend	1-1-2017

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413-215-0992(T)	12-1-2016	Repeal	1-1-2017	415-012-0010	2-2-2017	Amend(T)	3-1-2017
413-215-0996	12-1-2016	Amend	1-1-2017	415-012-0020	12-14-2016	Amend	1-1-2017
413-215-0996(T)	12-1-2016	Repeal	1-1-2017	415-012-0020	2-2-2017	Amend(T)	3-1-2017
413-215-1001	12-1-2016	Amend	1-1-2017	415-012-0030	12-14-2016	Amend	1-1-2017
413-215-1001(T)	12-1-2016	Repeal	1-1-2017	415-012-0030	2-2-2017	Amend(T)	3-1-2017
413-215-1006	12-1-2016	Amend	1-1-2017	415-012-0035	12-14-2016	Amend	1-1-2017
413-215-1006(T)	12-1-2016	Repeal	1-1-2017	415-012-0035	2-2-2017	Amend(T)	3-1-2017
413-215-1011	12-1-2016	Amend	1-1-2017	415-012-0040	12-14-2016	Amend	1-1-2017
413-215-1011(T)	12-1-2016	Repeal	1-1-2017	415-012-0050	12-14-2016	Amend	1-1-2017
413-215-1016	12-1-2016	Amend	1-1-2017	415-012-0055	12-14-2016	Amend	1-1-2017
413-215-1016(T)	12-1-2016	Repeal	1-1-2017	415-012-0060	12-14-2016	Amend	1-1-2017
413-215-1021	12-1-2016	Amend	1-1-2017	415-012-0060	2-2-2017	Amend(T)	3-1-2017
413-215-1021(T)	12-1-2016	Repeal	1-1-2017	415-012-0065	12-14-2016	Amend	1-1-2017
413-215-1026	12-1-2016	Amend	1-1-2017	415-012-0067	12-14-2016	Amend	1-1-2017
413-215-1026(T)	12-1-2016	Repeal	1-1-2017	415-012-0075	2-2-2017	Adopt(T)	3-1-2017
413-215-1031	12-1-2016	Amend	1-1-2017	415-012-0090	12-14-2016	Amend	1-1-2017
413-215-1031(T)	12-1-2016	Repeal	1-1-2017	415-020-0000	12-14-2016	Amend	1-1-2017
414-061-0020	12-19-2016	Amend	2-1-2017	415-020-0005	12-14-2016	Amend	1-1-2017
414-061-0040	12-19-2016	Amend	2-1-2017	415-020-0010	12-14-2016	Amend	1-1-2017
414-061-0050	12-19-2016	Amend	2-1-2017	415-020-0090	12-14-2016	Amend	1-1-2017
414-061-0080	1-26-2017	Amend(T)	3-1-2017	415-055-0000	12-5-2016	Amend	1-1-2017
414-061-0100	12-19-2016	Amend	2-1-2017	415-055-0010	12-5-2016	Amend	1-1-2017
414-061-0110	12-19-2016	Amend	2-1-2017	415-055-0035	12-5-2016	Amend	1-1-2017
414-061-0120	12-19-2016	Amend	2-1-2017	415-060-0010	12-14-2016	Repeal	1-1-2017
414-180-0005	1-31-2017	Amend	3-1-2017	415-060-0020	12-14-2016	Repeal	1-1-2017
414-180-0010	1-31-2017	Amend	3-1-2017	415-060-0030	12-14-2016	Repeal	1-1-2017
414-180-0015	1-31-2017	Amend	3-1-2017	415-060-0040	12-14-2016	Repeal	1-1-2017
414-180-0015	3-27-2017	Amend	5-1-2017	415-060-0050	12-14-2016	Repeal	1-1-2017
414-180-0020	1-31-2017	Amend	3-1-2017	416-070-0010	1-31-2017	Amend	3-1-2017
414-180-0020	3-27-2017	Amend	5-1-2017	416-070-0020	1-31-2017	Amend	3-1-2017
414-180-0025	1-31-2017	Amend	3-1-2017	416-070-0040	1-31-2017	Amend	3-1-2017
414-180-0025	3-27-2017	Amend	5-1-2017	416-070-0050	1-31-2017	Amend	3-1-2017
414-180-0055	1-31-2017	Amend	3-1-2017	416-070-0060	1-31-2017	Amend	3-1-2017
414-205-0040	3-27-2017	Amend	5-1-2017	416-335-0090	12-8-2016	Amend	1-1-2017
414-205-0055	3-27-2017	Amend	5-1-2017	436-009-0004	1-1-2017	Amend(T)	2-1-2017
414-205-0100	3-27-2017	Amend	5-1-2017	436-009-0004	4-1-2017	Amend	4-1-2017
414-205-0110	3-27-2017	Amend	5-1-2017	436-009-0010	1-1-2017	Amend(T)	2-1-2017
414-205-0120	3-27-2017	Amend	5-1-2017	436-009-0010	4-1-2017	Amend	4-1-2017
414-300-0040	3-27-2017	Amend	5-1-2017	436-009-0020	4-1-2017	Amend	4-1-2017
414-300-0120	3-27-2017	Amend	5-1-2017	436-009-0023	4-1-2017	Amend	4-1-2017
414-300-0170	3-27-2017	Amend	5-1-2017	436-009-0025	4-1-2017	Amend	4-1-2017
414-300-0180	3-27-2017	Amend	5-1-2017	436-009-0030	4-1-2017	Amend	4-1-2017
414-300-0220	3-27-2017	Amend	5-1-2017	436-009-0040	1-1-2017	Amend(T)	2-1-2017
414-300-0295	3-27-2017	Amend	5-1-2017	436-009-0040	4-1-2017	Amend	4-1-2017
414-300-0350	3-27-2017	Amend	5-1-2017	436-009-0060	4-1-2017	Amend	4-1-2017
414-350-0050	3-27-2017	Amend	5-1-2017	436-009-0110	4-1-2017	Amend	4-1-2017
414-350-0060	3-27-2017	Amend	5-1-2017	436-010-0001	4-11-2017	Amend(T)	5-1-2017
414-350-0100	3-27-2017	Amend	5-1-2017	436-010-0210	4-1-2017	Amend	4-1-2017
414-350-0115	3-27-2017	Amend	5-1-2017	436-010-0280	4-11-2017	Amend(T)	5-1-2017
414-350-0160	3-27-2017	Amend	5-1-2017	436-030-0003	4-11-2017	Amend(T)	5-1-2017
414-350-0170	3-27-2017	Amend	5-1-2017	436-030-0020	4-11-2017	Amend(T)	5-1-2017
414-350-0180	3-27-2017	Amend	5-1-2017	436-030-0035	4-11-2017	Amend(T)	5-1-2017
414-350-0220	3-27-2017	Amend	5-1-2017	436-035-0003	4-11-2017	Amend(T)	5-1-2017
414-350-0250	3-27-2017	Amend	5-1-2017	436-035-0006	4-11-2017	Amend(T)	5-1-2017
415-012-0000	12-14-2016	Amend	1-1-2017	436-035-0013	4-11-2017	Amend(T)	5-1-2017

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436-050-0003	1-1-2017	Amend	1-1-2017	436-060-0020	1-1-2017	Amend	1-1-2017
436-050-0005	1-1-2017	Amend	1-1-2017	436-060-0025	1-1-2017	Amend	1-1-2017
436-050-0006	1-1-2017	Repeal	1-1-2017	436-060-0030	1-1-2017	Amend	1-1-2017
436-050-0008	1-1-2017	Amend	1-1-2017	436-060-0035	1-1-2017	Amend	1-1-2017
436-050-0015	1-1-2017	Amend	1-1-2017	436-060-0040	1-1-2017	Amend	1-1-2017
436-050-0025	1-1-2017	Amend	1-1-2017	436-060-0045	1-1-2017	Amend	1-1-2017
436-050-0040	1-1-2017	Amend	1-1-2017	436-060-0055	1-1-2017	Amend	1-1-2017
436-050-0045	1-1-2017	Amend	1-1-2017	436-060-0060	1-1-2017	Amend	1-1-2017
436-050-0050	1-1-2017	Amend	1-1-2017	436-060-0095	1-1-2017	Amend	1-1-2017
436-050-0055	1-1-2017	Amend	1-1-2017	436-060-0105	1-1-2017	Amend	1-1-2017
436-050-0060	1-1-2017	Repeal	1-1-2017	436-060-0135	1-1-2017	Amend	1-1-2017
436-050-0110	1-1-2017	Amend	1-1-2017	436-060-0137	1-1-2017	Amend	1-1-2017
436-050-0120	1-1-2017	Amend	1-1-2017	436-060-0140	1-1-2017	Amend	1-1-2017
436-050-0150	1-1-2017	Amend	1-1-2017	436-060-0147	1-1-2017	Amend	1-1-2017
436-050-0160	1-1-2017	Amend	1-1-2017	436-060-0150	1-1-2017	Amend	1-1-2017
436-050-0165	1-1-2017	Amend	1-1-2017	436-060-0153	1-1-2017	Amend	1-1-2017
436-050-0170	1-1-2017	Amend	1-1-2017	436-060-0155	1-1-2017	Amend	1-1-2017
436-050-0175	1-1-2017	Amend	1-1-2017	436-060-0160	1-1-2017	Amend	1-1-2017
436-050-0180	1-1-2017	Amend	1-1-2017	436-060-0170	1-1-2017	Amend	1-1-2017
436-050-0180	1-1-2017	Amend	2-1-2017	436-060-0180	1-1-2017	Amend	1-1-2017
436-050-0185	1-1-2017	Amend	1-1-2017	436-060-0190	1-1-2017	Amend	1-1-2017
436-050-0190	1-1-2017	Amend	1-1-2017	436-060-0195	1-1-2017	Amend	1-1-2017
436-050-0195	1-1-2017	Amend	1-1-2017	436-060-0200	1-1-2017	Amend	1-1-2017
436-050-0200	1-1-2017	Amend	1-1-2017	436-060-0400	1-1-2017	Amend	1-1-2017
436-050-0205	1-1-2017	Amend	1-1-2017	436-060-0500	1-1-2017	Amend	1-1-2017
436-050-0210	1-1-2017	Amend	1-1-2017	436-060-0510	1-1-2017	Amend	1-1-2017
436-050-0220	1-1-2017	Amend	1-1-2017	436-105-0001	1-1-2017	Repeal	1-1-2017
436-050-0230	1-1-2017	Amend	1-1-2017	436-105-0002	1-1-2017	Repeal	1-1-2017
436-050-0260	1-1-2017	Amend	1-1-2017	436-105-0003	1-1-2017	Amend	1-1-2017
436-050-0270	1-1-2017	Amend	1-1-2017	436-105-0005	1-1-2017	Amend	1-1-2017
436-050-0280	1-1-2017	Amend	1-1-2017	436-105-0006	1-1-2017	Amend	1-1-2017
436-050-0290	1-1-2017	Amend	1-1-2017	436-105-0008	1-1-2017	Amend	1-1-2017
436-050-0300	1-1-2017	Amend	1-1-2017	436-105-0500	1-1-2017	Amend	1-1-2017
436-050-0340	1-1-2017	Amend	1-1-2017	436-105-0510	1-1-2017	Amend	1-1-2017
436-050-0400	1-1-2017	Amend	1-1-2017	436-105-0511	1-1-2017	Amend	1-1-2017
436-050-0410	1-1-2017	Amend	1-1-2017	436-105-0512	1-1-2017	Amend	1-1-2017
436-050-0420	1-1-2017	Amend	1-1-2017	436-105-0520	1-1-2017	Amend	1-1-2017
436-050-0440	1-1-2017	Amend	1-1-2017	436-105-0530	1-1-2017	Amend	1-1-2017
436-050-0450	1-1-2017	Amend	1-1-2017	436-105-0540	1-1-2017	Amend	1-1-2017
436-050-0455	1-1-2017	Amend	1-1-2017	436-105-0550	1-1-2017	Amend	1-1-2017
436-050-0460	1-1-2017	Amend	1-1-2017	436-105-0560	1-1-2017	Amend	1-1-2017
436-050-0470	1-1-2017	Amend	1-1-2017	436-110-0001	1-1-2017	Repeal	1-1-2017
436-050-0480	1-1-2017	Amend	1-1-2017	436-110-0002	1-1-2017	Repeal	1-1-2017
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436-060-0002	1-1-2017	Repeal	1-1-2017	436-110-0005	1-1-2017	Amend	1-1-2017
436-060-0003	1-1-2017	Amend	1-1-2017	436-110-0006	1-1-2017	Amend	1-1-2017
436-060-0005	1-1-2017	Amend	1-1-2017	436-110-0007	1-1-2017	Amend	1-1-2017
436-060-0006	1-1-2017	Repeal	1-1-2017	436-110-0150	1-1-2017	Amend	1-1-2017
436-060-0008	1-1-2017	Amend	1-1-2017	436-110-0240	1-1-2017	Amend	1-1-2017
436-060-0009	1-1-2017	Amend	1-1-2017	436-110-0290	1-1-2017	Amend	1-1-2017
436-060-0010	1-1-2017	Amend	1-1-2017	436-110-0310	1-1-2017	Amend	1-1-2017
436-060-0011	1-1-2017	Adopt	1-1-2017	436-110-0320	1-1-2017	Amend	1-1-2017
436-060-0015	1-1-2017	Amend	1-1-2017	436-110-0325	1-1-2017	Amend	1-1-2017
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436-110-0337	1-1-2017	Amend	1-1-2017	437-002-0022	11-1-2017	Amend	7-1-2017
436-110-0345	1-1-2017	Amend	1-1-2017	437-002-0023	11-1-2017	Repeal	7-1-2017
436-110-0346	1-1-2017	Amend	1-1-2017	437-002-0026	11-1-2017	Amend	7-1-2017
436-110-0347	1-1-2017	Amend	1-1-2017	437-002-0027	11-1-2017	Repeal	7-1-2017
436-110-0350	1-1-2017	Amend	1-1-2017	437-002-0028	11-1-2017	Repeal	7-1-2017
436-110-0351	1-1-2017	Amend	1-1-2017	437-002-0030	11-1-2017	Repeal	7-1-2017
436-110-0352	1-1-2017	Amend	1-1-2017	437-002-0031	11-1-2017	Repeal	7-1-2017
436-110-0850	1-1-2017	Amend	1-1-2017	437-002-0032	11-1-2017	Amend	7-1-2017
436-110-0900	1-1-2017	Amend	1-1-2017	437-002-0033	11-1-2017	Amend	7-1-2017
436-120-0001	1-1-2017	Repeal	1-1-2017	437-002-0060	11-1-2017	Amend	7-1-2017
436-120-0002	1-1-2017	Repeal	1-1-2017	437-002-0072	11-1-2017	Repeal	7-1-2017
436-120-0003	1-1-2017	Amend	1-1-2017	437-002-0074	11-1-2017	Repeal	7-1-2017
436-120-0005	1-1-2017	Amend	1-1-2017	437-002-0076	11-1-2017	Repeal	7-1-2017
436-120-0006	1-1-2017	Repeal	1-1-2017	437-002-0120	11-1-2017	Amend	7-1-2017
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436-120-0008	1-1-2017	Amend	1-1-2017	437-002-0170	1-1-2018	Amend	3-1-2017
436-120-0012	1-1-2017	Amend	1-1-2017	437-002-0182	11-1-2017	Amend	7-1-2017
436-120-0014	1-1-2017	Repeal	1-1-2017	437-002-0220	11-1-2017	Amend	7-1-2017
436-120-0016	1-1-2017	Repeal	1-1-2017	437-002-0300	11-1-2017	Amend	7-1-2017
436-120-0017	1-1-2017	Repeal	1-1-2017	437-002-0309	11-1-2017	Amend	7-1-2017
436-120-0018	1-1-2017	Repeal	1-1-2017	437-002-0310	11-1-2017	Amend	7-1-2017
436-120-0115	1-1-2017	Amend	1-1-2017	437-002-0311	11-1-2017	Amend	7-1-2017
436-120-0125	1-1-2017	Repeal	1-1-2017	437-002-0312	11-1-2017	Amend	7-1-2017
436-120-0135	1-1-2017	Repeal	1-1-2017	437-002-0314	11-1-2017	Amend	7-1-2017
436-120-0145	1-1-2017	Amend	1-1-2017	437-002-2021	11-1-2017	Adopt	7-1-2017
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436-120-0165	1-1-2017	Amend	1-1-2017	437-002-2027	11-1-2017	Adopt	7-1-2017
436-120-0175	1-1-2017	Amend	1-1-2017	437-002-2031	11-1-2017	Adopt	7-1-2017
436-120-0185	1-1-2017	Amend	1-1-2017	437-002-2306	11-1-2017	Amend	7-1-2017
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436-120-0400	1-1-2017	Am. & Ren.	1-1-2017	437-004-6000	1-1-2018	Amend	3-1-2017
436-120-0410	1-1-2017	Amend	1-1-2017	437-004-6001	1-1-2018	Adopt	3-1-2017
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436-120-0443	1-1-2017	Amend	1-1-2017	437-004-6501	1-1-2018	Adopt	3-1-2017
436-120-0445	1-1-2017	Amend	1-1-2017	437-004-6502	1-1-2018	Adopt	3-1-2017
436-120-0448	1-1-2017	Am. & Ren.	1-1-2017	437-004-6508	1-1-2018	Adopt	3-1-2017
436-120-0449	1-1-2017	Repeal	1-1-2017	437-004-6509	1-1-2018	Adopt	3-1-2017
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436-120-0500	1-1-2017	Amend	1-1-2017	440-007-0230	1-6-2017	Repeal	2-1-2017
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436-120-0530	1-1-2017	Amend	1-1-2017	440-007-0260	1-6-2017	Repeal	2-1-2017
436-120-0700	1-1-2017	Amend	1-1-2017	440-007-0270	1-6-2017	Repeal	2-1-2017
436-120-0710	1-1-2017	Amend	1-1-2017	440-007-0272	1-6-2017	Repeal	2-1-2017
436-120-0720	1-1-2017	Amend	1-1-2017	440-007-0275	1-6-2017	Repeal	2-1-2017
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436-120-0800	1-1-2017	Amend	1-1-2017	440-007-0285	1-6-2017	Repeal	2-1-2017
436-120-0810	1-1-2017	Amend	1-1-2017	440-007-0290	1-6-2017	Repeal	2-1-2017
436-120-0820	1-1-2017	Amend	1-1-2017	440-007-0300	1-6-2017	Repeal	2-1-2017
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436-120-0840	1-1-2017	Amend	1-1-2017	441-025-0010	2-1-2017	Repeal	3-1-2017
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441-035-0040	2-1-2017	Repeal	3-1-2017	461-130-0305	1-1-2017	Amend	2-1-2017
441-035-0045	2-1-2017	Amend	3-1-2017	461-130-0305(T)	1-1-2017	Repeal	2-1-2017
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441-175-0020	2-1-2017	Amend	3-1-2017	461-130-0330	1-1-2017	Amend	2-1-2017
441-175-0030	2-1-2017	Amend	3-1-2017	461-130-0330(T)	1-1-2017	Repeal	2-1-2017
441-500-0020	2-1-2017	Amend	3-1-2017	461-135-0085	4-1-2017	Amend	5-1-2017
441-505-3030	2-1-2017	Amend	3-1-2017	461-135-0485	7-1-2017	Amend	7-1-2017
441-505-3090	2-1-2017	Amend	3-1-2017	461-135-0491	7-1-2017	Amend	7-1-2017
441-730-0026	4-1-2017	Amend	3-1-2017	461-135-0493	7-1-2017	Amend	7-1-2017
441-745-0000	4-14-2017	Amend	5-1-2017	461-135-0520	1-1-2017	Amend	2-1-2017
441-745-0300	4-14-2017	Amend	5-1-2017	461-135-0520(T)	1-1-2017	Repeal	2-1-2017
441-745-0310	4-14-2017	Amend	5-1-2017	461-135-0560	4-1-2017	Amend	5-1-2017
441-745-0330	4-14-2017	Amend	5-1-2017	461-135-0730	1-1-2017	Amend	1-1-2017
441-810-0020	4-14-2017	Amend	5-1-2017	461-135-0780	1-1-2017	Amend	1-1-2017
441-810-0030	4-14-2017	Amend	5-1-2017	461-135-0820	1-1-2017	Amend	1-1-2017
441-810-0040	4-14-2017	Amend	5-1-2017	461-135-0832	2-13-2017	Amend(T)	3-1-2017
441-810-0050	4-14-2017	Amend	5-1-2017	461-135-0832	7-1-2017	Amend	7-1-2017
441-810-0080	4-14-2017	Amend	5-1-2017	461-135-0832(T)	7-1-2017	Repeal	7-1-2017
441-860-0020	4-1-2017	Amend	3-1-2017	461-135-0835	2-13-2017	Amend(T)	3-1-2017
441-860-0025	4-1-2017	Amend	3-1-2017	461-135-0835	7-1-2017	Amend	7-1-2017
441-860-0050	4-1-2017	Amend	3-1-2017	461-135-0835(T)	7-1-2017	Repeal	7-1-2017
441-880-0310	1-1-2017	Amend	2-1-2017	461-135-0900	4-1-2017	Amend	5-1-2017
441-885-0010	4-1-2017	Amend	3-1-2017	461-135-0915	4-1-2017	Adopt	5-1-2017
441-910-0010	4-14-2017	Amend	5-1-2017	461-135-0930	4-1-2017	Amend	5-1-2017
441-910-0030	4-14-2017	Amend	5-1-2017	461-140-0040	4-1-2017	Amend	5-1-2017
441-910-0050	4-14-2017	Amend	5-1-2017	461-140-0210	4-1-2017	Amend	5-1-2017
441-910-0055	4-14-2017	Amend	5-1-2017	461-140-0296	1-1-2017	Amend	1-1-2017
459-005-0525	1-27-2017	Amend	3-1-2017	461-140-0296(T)	1-1-2017	Repeal	1-1-2017
459-005-0545	1-27-2017	Amend	3-1-2017	461-145-0000	12-28-2016	Adopt	1-1-2017
459-009-0400	5-26-2017	Adopt	7-1-2017	461-145-0005	1-1-2017	Amend	1-1-2017
459-011-0050	5-26-2017	Amend	7-1-2017	461-145-0005	4-1-2017	Amend	5-1-2017
459-017-0060	1-1-2017	Amend	1-1-2017	461-145-0035	1-1-2017	Adopt	1-1-2017
459-080-0500	1-27-2017	Amend	3-1-2017	461-145-0035	4-1-2017	Amend	5-1-2017
461-025-0310	1-1-2017	Amend	2-1-2017	461-145-0040	7-1-2017	Amend	7-1-2017
461-101-0010	4-1-2017	Amend	5-1-2017	461-145-0050	7-1-2017	Amend	7-1-2017
461-110-0210	4-1-2017	Amend	5-1-2017	461-145-0088	4-1-2017	Amend	5-1-2017
461-110-0370	1-1-2017	Amend	2-1-2017	461-145-0108	7-1-2017	Amend	7-1-2017
461-110-0630	4-1-2017	Amend	5-1-2017	461-145-0110	7-1-2017	Amend	7-1-2017
461-110-0750	4-1-2017	Amend	5-1-2017	461-145-0140	1-1-2017	Amend	1-1-2017
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461-115-0190	4-1-2017	Amend	5-1-2017	461-145-0184	1-1-2017	Repeal	1-1-2017
461-115-0230	4-1-2017	Amend	5-1-2017	461-145-0210	7-1-2017	Amend	7-1-2017
461-115-0610	4-1-2017	Amend	5-1-2017	461-145-0220	1-1-2017	Amend	1-1-2017
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461-120-0125	4-1-2017	Amend	5-1-2017	461-145-0285	7-1-2017	Adopt	7-1-2017
461-120-0330	4-1-2017	Amend	5-1-2017	461-145-0300	4-1-2017	Amend	5-1-2017
461-120-0345	1-1-2017	Amend	1-1-2017	461-145-0320	7-1-2017	Amend	7-1-2017

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461-145-0417	1-1-2017	Adopt	1-1-2017	461-165-0030	7-1-2017	Amend	7-1-2017
461-145-0430	4-1-2017	Amend	5-1-2017	461-165-0160	3-24-2017	Amend(T)	5-1-2017
461-145-0435	7-1-2017	Amend	7-1-2017	461-165-0180	1-1-2017	Amend	2-1-2017
461-145-0440	7-1-2017	Amend	7-1-2017	461-165-0180	6-1-2017	Amend(T)	7-1-2017
461-145-0460	7-1-2017	Amend	7-1-2017	461-165-0180(T)	1-1-2017	Repeal	2-1-2017
461-145-0470	4-1-2017	Amend(T)	5-1-2017	461-170-0011	3-10-2017	Amend(T)	4-1-2017
461-145-0505	4-1-2017	Amend	5-1-2017	461-170-0101	3-10-2017	Amend(T)	4-1-2017
461-145-0510	7-1-2017	Amend	7-1-2017	461-170-0120	7-1-2017	Repeal	7-1-2017
461-145-0520	7-1-2017	Amend	7-1-2017	461-175-0220	4-1-2017	Amend	5-1-2017
461-145-0530	4-1-2017	Amend	5-1-2017	461-180-0050	1-1-2017	Amend	1-1-2017
461-145-0540	1-1-2017	Amend	2-1-2017	461-190-0211	3-1-2017	Amend(T)	4-1-2017
461-145-0540	3-13-2017	Amend(T)	4-1-2017	461-190-0231	4-1-2017	Amend	5-1-2017
461-145-0540(T)	1-1-2017	Repeal	2-1-2017	461-190-0360	1-1-2017	Amend	2-1-2017
461-145-0550	1-1-2017	Amend	1-1-2017	461-190-0500	1-1-2017	Amend	2-1-2017
461-145-0930	1-1-2017	Amend	1-1-2017	461-193-0031	4-1-2017	Amend	5-1-2017
461-145-0930	4-1-2017	Amend	5-1-2017	461-195-0501	1-1-2017	Amend	2-1-2017
461-150-0050	1-1-2017	Amend	1-1-2017	461-195-0601	4-1-2017	Amend	5-1-2017
461-155-0020	4-1-2017	Amend(T)	5-1-2017	462-200-0665	1-23-2017	Adopt	3-1-2017
461-155-0150	1-1-2017	Amend	2-1-2017	471-007-0200	4-5-2017	Amend	5-1-2017
461-155-0180	3-1-2017	Amend(T)	4-1-2017	471-007-0210	4-5-2017	Amend	5-1-2017
461-155-0180	7-1-2017	Amend	7-1-2017	471-007-0220	4-5-2017	Repeal	5-1-2017
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461-155-0225	4-1-2017	Amend	5-1-2017	471-007-0240	4-5-2017	Repeal	5-1-2017
461-155-0250	1-1-2017	Amend	1-1-2017	471-007-0250	4-5-2017	Repeal	5-1-2017
461-155-0250	4-1-2017	Amend(T)	5-1-2017	471-007-0260	4-5-2017	Repeal	5-1-2017
461-155-0270	1-1-2017	Amend	1-1-2017	471-007-0270	4-5-2017	Repeal	5-1-2017
461-155-0290	3-1-2017	Amend	4-1-2017	471-007-0280	4-5-2017	Repeal	5-1-2017
461-155-0291	3-1-2017	Amend	4-1-2017	471-007-0285	4-5-2017	Amend	5-1-2017
461-155-0295	3-1-2017	Amend	4-1-2017	471-007-0290	4-5-2017	Repeal	5-1-2017
461-155-0300	1-1-2017	Amend	1-1-2017	471-007-0300	4-5-2017	Amend	5-1-2017
461-155-0300	4-1-2017	Suspend	5-1-2017	471-007-0310	4-5-2017	Amend	5-1-2017
461-155-0551	7-1-2017	Repeal	7-1-2017	471-030-0075	2-27-2017	Amend(T)	4-1-2017
461-155-0580	7-1-2017	Amend	7-1-2017	471-031-0017	2-1-2017	Amend	3-1-2017
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461-155-0620	7-1-2017	Amend	7-1-2017	573-050-0016	12-6-2016	Amend	1-1-2017
461-155-0630	7-1-2017	Amend	7-1-2017	573-050-0025	12-6-2016	Amend	1-1-2017
461-155-0640	7-1-2017	Repeal	7-1-2017	573-050-0040	12-6-2016	Amend	1-1-2017
461-155-0660	4-1-2017	Amend(T)	5-1-2017	573-050-0045	12-6-2016	Amend	1-1-2017
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461-160-0100	4-1-2017	Amend	5-1-2017	581-013-0015	3-1-2017	Adopt	4-1-2017
461-160-0160	4-1-2017	Amend	5-1-2017	581-013-0020	3-1-2017	Adopt	4-1-2017
461-160-0430	2-1-2017	Amend(T)	3-1-2017	581-013-0025	3-1-2017	Adopt	4-1-2017
461-160-0430	7-1-2017	Amend	7-1-2017	581-013-0030	3-1-2017	Adopt	4-1-2017
461-160-0430(T)	7-1-2017	Repeal	7-1-2017	581-013-0035	3-1-2017	Adopt	4-1-2017
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461-160-0580	1-1-2017	Amend	1-1-2017	581-020-0603	12-20-2016	Amend	2-1-2017
461-160-0590	7-1-2017	Amend	7-1-2017	581-020-0606	12-20-2016	Amend	2-1-2017
461-160-0620	1-1-2017	Amend	1-1-2017	581-020-0609	12-20-2016	Amend	2-1-2017
461-160-0620	7-1-2017	Amend	7-1-2017	581-020-0612	12-20-2016	Amend	2-1-2017
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581-020-0624	12-20-2016	Adopt	2-1-2017	584-420-0375	4-12-2017	Repeal	5-1-2017
581-021-0041	5-4-2017	Amend	6-1-2017	584-420-0390	4-12-2017	Repeal	5-1-2017
581-022-1210	5-2-2017	Amend	6-1-2017	584-420-0415	2-1-2017	Amend	3-1-2017
581-022-1920	2-1-2017	Amend(T)	3-1-2017	584-420-0420	2-1-2017	Amend	3-1-2017
581-022-2440	2-1-2017	Adopt	3-1-2017	584-420-0425	2-1-2017	Amend	3-1-2017
581-027-0005	3-1-2017	Amend	4-1-2017	584-420-0440	2-1-2017	Amend	3-1-2017
581-027-0010	3-1-2017	Amend	4-1-2017	584-420-0460	2-1-2017	Amend	3-1-2017
581-027-0010	6-1-2017	Amend	7-1-2017	584-420-0490	2-1-2017	Amend	3-1-2017
581-027-0015	3-1-2017	Amend	4-1-2017	584-420-0630	2-1-2017	Amend	3-1-2017
581-027-0015	6-1-2017	Amend	7-1-2017	585-010-0310	2-7-2017	Amend	3-1-2017
581-027-0020	3-1-2017	Amend	4-1-2017	589-002-0120	7-1-2017	Amend	6-1-2017
581-027-0020	6-1-2017	Amend	7-1-2017	603-011-0255	3-22-2017	Amend	5-1-2017
581-027-0023	6-1-2017	Adopt	7-1-2017	603-018-0005	3-24-2017	Amend(T)	5-1-2017
581-027-0025	3-1-2017	Amend	4-1-2017	603-018-0020	3-24-2017	Amend(T)	5-1-2017
581-027-0025	6-1-2017	Amend	7-1-2017	603-025-0400	2-2-2017	Adopt(T)	3-1-2017
581-027-0030	3-1-2017	Amend	4-1-2017	603-025-0400	2-8-2017	Amend(T)	3-1-2017
581-027-0030	6-1-2017	Amend	7-1-2017	603-025-0400	2-10-2017	Amend(T)	3-1-2017
581-027-0035	3-1-2017	Amend	4-1-2017	603-025-0400(T)	2-10-2017	Suspend	3-1-2017
581-027-0035	6-1-2017	Amend	7-1-2017	603-048-0010	3-15-2017	Amend(T)	4-1-2017
581-027-0040	3-1-2017	Amend	4-1-2017	603-048-0100	3-15-2017	Amend(T)	4-1-2017
581-027-0040	6-1-2017	Amend	7-1-2017	603-048-0200	3-15-2017	Amend(T)	4-1-2017
581-027-0045	3-1-2017	Amend	4-1-2017	603-048-0300	3-15-2017	Amend(T)	4-1-2017
581-027-0045	6-1-2017	Amend	7-1-2017	603-048-0400	3-15-2017	Amend(T)	4-1-2017
581-027-0050	3-1-2017	Amend	4-1-2017	603-048-0500	3-15-2017	Amend(T)	4-1-2017
581-027-0050	6-1-2017	Amend	7-1-2017	603-048-0600	3-15-2017	Amend(T)	4-1-2017
581-051-0120	6-1-2017	Adopt	7-1-2017	603-048-0650	3-15-2017	Amend(T)	4-1-2017
581-051-0125	6-1-2017	Adopt	7-1-2017	603-048-0700	1-18-2017	Amend(T)	3-1-2017
584-010-0004	2-1-2017	Adopt	3-1-2017	603-048-0700	3-15-2017	Amend(T)	4-1-2017
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584-420-0020	2-1-2017	Amend	3-1-2017	603-075-0050	1-17-2017	Amend	3-1-2017
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629-043-0015	7-1-2017	Amend	7-1-2017	635-005-0465	2-2-2017	Amend(T)	3-1-2017
629-043-0020	7-1-2017	Amend	7-1-2017	635-005-0465	2-8-2017	Amend(T)	3-1-2017
629-043-0025	7-1-2017	Amend	7-1-2017	635-005-0465	2-10-2017	Amend(T)	3-1-2017
629-043-0026	7-1-2017	Amend	7-1-2017	635-005-0465(T)	12-18-2016	Suspend	1-1-2017
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629-043-0036	7-1-2017	Amend	7-1-2017	635-005-0465(T)	2-2-2017	Suspend	3-1-2017
629-043-0040	7-1-2017	Amend	7-1-2017	635-005-0465(T)	2-8-2017	Suspend	3-1-2017
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629-605-0170	7-1-2017	Amend	7-1-2017	635-005-0505	11-21-2016	Amend(T)	1-1-2017
629-605-0173	7-1-2017	Amend	7-1-2017	635-005-0915	1-1-2017	Amend	1-1-2017
629-605-0500	7-1-2017	Amend	7-1-2017	635-006-0210	1-1-2017	Amend	1-1-2017
629-611-0000	7-1-2017	Amend	7-1-2017	635-006-0210	2-2-2017	Amend(T)	3-1-2017
629-615-0300	7-1-2017	Amend	7-1-2017	635-006-0210(T)	2-2-2017	Suspend	3-1-2017
629-620-0300	7-1-2017	Amend	7-1-2017	635-006-0212	6-14-2017	Amend(T)	7-1-2017
629-620-0400	7-1-2017	Amend	7-1-2017	635-006-0215	6-14-2017	Amend(T)	7-1-2017
629-620-0800	7-1-2017	Amend	7-1-2017	635-006-0225	6-14-2017	Amend(T)	7-1-2017
629-623-0300	7-1-2017	Amend	7-1-2017	635-006-0232	1-23-2017	Amend	3-1-2017
629-625-0100	7-1-2017	Amend	7-1-2017	635-008-0120	3-2-2017	Amend	4-1-2017
629-625-0430	7-1-2017	Amend	7-1-2017	635-008-0120	4-24-2017	Amend	6-1-2017
629-625-0700	7-1-2017	Amend	7-1-2017	635-008-0123	3-21-2017	Amend	5-1-2017
629-630-0600	7-1-2017	Amend	7-1-2017	635-008-0170	11-17-2016	Amend	1-1-2017
629-630-0700	7-1-2017	Amend	7-1-2017	635-008-0175	11-17-2016	Amend	1-1-2017
629-630-0800	7-1-2017	Amend	7-1-2017	635-011-0100	1-1-2017	Amend	2-1-2017
629-635-0100	7-1-2017	Amend	7-1-2017	635-011-0102	4-22-2017	Amend(T)	5-1-2017
629-635-0110	7-1-2017	Amend	7-1-2017	635-011-0104	4-22-2017	Amend(T)	5-1-2017
629-635-0200	7-1-2017	Amend	7-1-2017	635-013-0003	4-24-2017	Amend	6-1-2017
629-635-0210	7-1-2017	Amend	7-1-2017	635-013-0004	1-1-2017	Amend	2-1-2017
629-635-0310	7-1-2017	Amend	7-1-2017	635-013-0007	4-24-2017	Amend	6-1-2017
629-640-0000	7-1-2017	Am. & Ren.	7-1-2017	635-014-0080	1-1-2017	Amend	2-1-2017
629-640-0100	7-1-2017	Am. & Ren.	7-1-2017	635-014-0090	1-1-2017	Amend	2-1-2017
629-640-0105	7-1-2017	Am. & Ren.	7-1-2017	635-014-0090	1-25-2017	Amend	3-1-2017
629-640-0110	7-1-2017	Am. & Ren.	7-1-2017	635-016-0080	1-1-2017	Amend	2-1-2017
629-640-0200	7-1-2017	Am. & Ren.	7-1-2017	635-016-0090	1-1-2017	Amend	2-1-2017
629-640-0210	7-1-2017	Am. & Ren.	7-1-2017	635-016-0090	5-15-2017	Amend(T)	6-1-2017
629-640-0300	7-1-2017	Am. & Ren.	7-1-2017	635-017-0080	1-1-2017	Amend	2-1-2017
629-640-0400	7-1-2017	Am. & Ren.	7-1-2017	635-017-0080	4-1-2017	Amend(T)	5-1-2017
629-640-0500	7-1-2017	Am. & Ren.	7-1-2017	635-017-0090	1-1-2017	Amend	2-1-2017
629-642-0105	7-1-2017	Adopt	7-1-2017	635-017-0090	1-25-2017	Amend	3-1-2017
629-642-0110	7-1-2017	Adopt	7-1-2017	635-017-0090	4-24-2017	Amend(T)	6-1-2017
629-680-0020	7-1-2017	Amend	7-1-2017	635-017-0090	4-25-2017	Amend(T)	6-1-2017
635-003-0003	4-24-2017	Amend	6-1-2017	635-017-0090	5-1-2017	Amend(T)	6-1-2017
635-003-0085	4-24-2017	Amend	6-1-2017	635-017-0090	5-8-2017	Amend(T)	6-1-2017
635-004-0215	1-1-2017	Amend	1-1-2017	635-017-0090	5-13-2017	Amend(T)	6-1-2017
635-004-0223	1-1-2017	Adopt	1-1-2017	635-017-0090	6-1-2017	Amend(T)	7-1-2017
635-004-0275	2-15-2017	Amend	3-1-2017	635-017-0090	6-8-2017	Amend(T)	7-1-2017
635-004-0330	1-1-2017	Amend	1-1-2017	635-017-0090	6-8-2017	Amend(T)	7-1-2017
635-004-0350	1-1-2017	Amend	1-1-2017	635-017-0090(T)	6-1-2017	Suspend	7-1-2017
635-004-0355	1-1-2017	Amend	1-1-2017	635-017-0090(T)	6-8-2017	Suspend	7-1-2017
635-004-0585	4-24-2017	Amend	6-1-2017	635-017-0090(T)	6-8-2017	Suspend	7-1-2017
635-005-0240	1-1-2017	Amend	1-1-2017	635-017-0095	1-1-2017	Amend	2-1-2017
635-005-0263	1-1-2017	Adopt	1-1-2017	635-018-0080	1-1-2017	Amend	2-1-2017
635-005-0355	12-15-2016	Amend(T)	1-1-2017	635-018-0090	1-1-2017	Amend	2-1-2017

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635-018-0090	4-15-2017	Amend(T)	3-1-2017	635-042-0130	2-2-2017	Amend(T)	3-1-2017
635-018-0090(T)	4-15-2017	Suspend	3-1-2017	635-042-0145	2-6-2017	Amend(T)	3-1-2017
635-018-0090(T)	4-17-2017	Suspend	6-1-2017	635-042-0145	3-30-2017	Amend(T)	5-1-2017
635-019-0080	1-1-2017	Amend	2-1-2017	635-042-0145	4-6-2017	Amend(T)	5-1-2017
635-019-0090	1-1-2017	Amend	2-1-2017	635-042-0145	4-13-2017	Amend(T)	5-1-2017
635-021-0080	1-1-2017	Amend	2-1-2017	635-042-0145	4-27-2017	Amend(T)	6-1-2017
635-021-0090	1-1-2017	Amend	2-1-2017	635-042-0145	5-3-2017	Amend(T)	6-1-2017
635-021-0090	1-18-2017	Amend(T)	3-1-2017	635-042-0145	5-15-2017	Amend(T)	6-1-2017
635-023-0080	1-1-2017	Amend	2-1-2017	635-042-0145	5-22-2017	Amend(T)	7-1-2017
635-023-0090	1-1-2017	Amend	2-1-2017	635-042-0145	5-29-2017	Amend(T)	7-1-2017
635-023-0090	1-25-2017	Amend	3-1-2017	635-042-0145	6-1-2017	Amend(T)	7-1-2017
635-023-0095	1-1-2017	Amend	2-1-2017	635-042-0145	6-15-2017	Amend(T)	7-1-2017
635-023-0095	3-25-2017	Amend(T)	4-1-2017	635-042-0145(T)	2-6-2017	Suspend	3-1-2017
635-023-0095	3-30-2017	Amend(T)	5-1-2017	635-042-0145(T)	5-29-2017	Suspend	7-1-2017
635-023-0095	6-5-2017	Amend(T)	7-1-2017	635-042-0145(T)	6-1-2017	Suspend	7-1-2017
635-023-0095	6-15-2017	Amend(T)	7-1-2017	635-042-0160	2-6-2017	Amend(T)	3-1-2017
635-023-0095(T)	6-15-2017	Suspend	7-1-2017	635-042-0160	3-20-2017	Amend(T)	5-1-2017
635-023-0125	1-1-2017	Amend	2-1-2017	635-042-0160	3-30-2017	Amend(T)	5-1-2017
635-023-0125	3-1-2017	Amend(T)	4-1-2017	635-042-0160	4-6-2017	Amend(T)	5-1-2017
635-023-0125	4-7-2017	Amend(T)	5-1-2017	635-042-0160	4-13-2017	Amend(T)	5-1-2017
635-023-0125	4-13-2017	Amend(T)	5-1-2017	635-042-0160	5-22-2017	Amend(T)	7-1-2017
635-023-0125	5-16-2017	Amend(T)	6-1-2017	635-042-0160	6-15-2017	Amend(T)	7-1-2017
635-023-0128	1-1-2017	Amend	2-1-2017	635-042-0160(T)	2-6-2017	Suspend	3-1-2017
635-023-0128	6-16-2017	Amend(T)	7-1-2017	635-042-0170	2-6-2017	Amend(T)	3-1-2017
635-023-0130	1-1-2017	Amend	2-1-2017	635-042-0170	3-20-2017	Amend(T)	5-1-2017
635-023-0134	1-1-2017	Amend	2-1-2017	635-042-0170	3-30-2017	Amend(T)	5-1-2017
635-023-0134	4-22-2017	Amend(T)	6-1-2017	635-042-0170	5-22-2017	Amend(T)	7-1-2017
635-023-0140	1-1-2017	Amend	2-1-2017	635-042-0170	6-15-2017	Amend(T)	7-1-2017
635-039-0080	1-1-2017	Amend	2-1-2017	635-042-0170(T)	2-6-2017	Suspend	3-1-2017
635-039-0080	2-15-2017	Amend	3-1-2017	635-042-0180	2-6-2017	Amend(T)	3-1-2017
635-039-0085	4-24-2017	Amend	6-1-2017	635-042-0180	3-30-2017	Amend(T)	5-1-2017
635-039-0085	5-25-2017	Amend(T)	7-1-2017	635-042-0180	5-22-2017	Amend(T)	7-1-2017
635-039-0085	6-8-2017	Amend(T)	7-1-2017	635-042-0180(T)	2-6-2017	Suspend	3-1-2017
635-039-0085	6-17-2017	Amend(T)	7-1-2017	635-044-0000	1-24-2017	Repeal	3-1-2017
635-039-0085(T)	6-8-2017	Suspend	7-1-2017	635-044-0002	1-24-2017	Repeal	3-1-2017
635-039-0085(T)	6-17-2017	Suspend	7-1-2017	635-044-0005	1-24-2017	Repeal	3-1-2017
635-039-0090	1-1-2017	Amend	1-1-2017	635-044-0010	1-24-2017	Repeal	3-1-2017
635-039-0090	1-1-2017	Amend	2-1-2017	635-044-0015	1-24-2017	Repeal	3-1-2017
635-039-0090	4-24-2017	Amend	6-1-2017	635-044-0020	1-24-2017	Repeal	3-1-2017
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635-041-0030	2-21-2017	Amend	3-1-2017	635-044-0035	1-24-2017	Repeal	3-1-2017
635-041-0045	6-15-2017	Amend(T)	7-1-2017	635-044-0035	1-24-2017	Repeal	3-1-2017
635-041-0050	2-21-2017	Amend	3-1-2017	635-044-0040	1-24-2017	Repeal	3-1-2017
635-041-0061	2-21-2017	Amend	3-1-2017	635-044-0045	1-24-2017	Repeal	3-1-2017
635-041-0063	2-21-2017	Amend	3-1-2017	635-044-0050	1-24-2017	Repeal	3-1-2017
635-041-0065	2-1-2017	Amend(T)	3-1-2017	635-044-0051	1-24-2017	Repeal	3-1-2017
635-041-0065	2-7-2017	Amend(T)	3-1-2017	635-044-0060	1-24-2017	Repeal	3-1-2017
635-041-0065	2-15-2017	Amend(T)	3-1-2017	635-044-0075	1-24-2017	Repeal	3-1-2017
635-041-0065	2-22-2017	Amend(T)	4-1-2017	635-044-0080	1-24-2017	Repeal	3-1-2017
635-041-0065	3-1-2017	Amend(T)	4-1-2017	635-044-0120	1-24-2017	Repeal	3-1-2017
635-041-0065	3-17-2017	Amend(T)	4-1-2017	635-044-0125	1-24-2017	Repeal	3-1-2017
635-041-0065(T)	2-7-2017	Suspend	3-1-2017	635-044-0130	1-24-2017	Repeal	3-1-2017
635-041-0076	6-15-2017	Amend(T)	7-1-2017	635-044-0132	1-24-2017	Repeal	3-1-2017
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635-044-0430	1-24-2017	Adopt	3-1-2017	635-500-6720	12-15-2016	Amend	1-1-2017
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635-044-0450	1-24-2017	Adopt	3-1-2017	635-500-6720	4-4-2017	Amend	5-1-2017
635-044-0460	1-24-2017	Adopt	3-1-2017	635-500-6725	12-15-2016	Amend	1-1-2017
635-044-0470	1-24-2017	Adopt	3-1-2017	635-500-6725	1-25-2017	Amend	3-1-2017
635-044-0475	1-24-2017	Adopt	3-1-2017	635-500-6730	12-15-2016	Amend	1-1-2017
635-044-0480	1-24-2017	Adopt	3-1-2017	635-500-6730	1-25-2017	Amend	3-1-2017
635-044-0490	1-24-2017	Adopt	3-1-2017	635-500-6730	4-4-2017	Amend	5-1-2017
635-044-0500	1-24-2017	Adopt	3-1-2017	635-500-6735	12-15-2016	Amend	1-1-2017
635-044-0500	3-9-2017	Amend	4-1-2017	635-500-6735	1-25-2017	Amend	3-1-2017
635-044-0510	1-24-2017	Adopt	3-1-2017	635-500-6735	4-4-2017	Amend	5-1-2017
635-044-0520	1-24-2017	Adopt	3-1-2017	635-500-6740	12-15-2016	Amend	1-1-2017
635-044-0530	1-24-2017	Adopt	3-1-2017	635-500-6740	1-25-2017	Amend	3-1-2017
635-044-0540	1-24-2017	Adopt	3-1-2017	635-500-6745	12-15-2016	Amend	1-1-2017
635-044-0550	1-24-2017	Adopt	3-1-2017	635-500-6745	1-25-2017	Amend	3-1-2017
635-044-0560	1-24-2017	Adopt	3-1-2017	635-500-6750	12-15-2016	Amend	1-1-2017
635-044-0570	1-24-2017	Adopt	3-1-2017	635-500-6750	1-25-2017	Amend	3-1-2017
635-044-0580	1-24-2017	Adopt	3-1-2017	647-010-0010	4-25-2017	Amend	6-1-2017
635-044-0590	1-24-2017	Adopt	3-1-2017	647-015-0010	4-25-2017	Amend	6-1-2017
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635-053-0000	4-24-2017	Amend	6-1-2017	660-038-0210	2-28-2017	Adopt	4-1-2017
635-054-0000	4-24-2017	Amend	6-1-2017	660-039-0000	2-27-2017	Adopt	4-1-2017
635-060-0000	3-2-2017	Amend	4-1-2017	660-039-0010	2-27-2017	Adopt	4-1-2017
635-060-0000	4-24-2017	Amend	6-1-2017	660-039-0020	2-27-2017	Adopt	4-1-2017
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635-066-0010	3-2-2017	Amend	4-1-2017	660-039-0080	2-27-2017	Adopt	4-1-2017
635-066-0020	3-2-2017	Amend	4-1-2017	660-039-0090	2-27-2017	Adopt	4-1-2017
635-067-0000	3-2-2017	Amend	4-1-2017	660-039-0100	2-27-2017	Adopt	4-1-2017
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690-507-0060	5-22-2017	Amend	7-1-2017	734-072-0015	5-23-2017	Amend	7-1-2017
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690-507-0640	5-22-2017	Amend	7-1-2017	735-024-0015	11-22-2016	Amend	1-1-2017
690-507-0647	5-22-2017	Amend	7-1-2017	735-024-0025	11-22-2016	Amend	1-1-2017
690-507-0650	5-22-2017	Amend	7-1-2017	735-040-0115	1-24-2017	Amend	3-1-2017
690-507-0660	5-22-2017	Amend	7-1-2017	735-061-0210	3-20-2017	Amend	5-1-2017
690-507-0670	5-22-2017	Amend	7-1-2017	735-061-0210(T)	3-20-2017	Repeal	5-1-2017
690-507-0680	5-22-2017	Amend	7-1-2017	735-062-0013	7-1-2017	Adopt	7-1-2017
690-507-0690	5-22-2017	Amend	7-1-2017	735-062-0040	4-26-2017	Amend	6-1-2017
690-507-0790	5-22-2017	Amend	7-1-2017	735-062-0090	3-20-2017	Amend	5-1-2017
695-005-0010	5-2-2017	Amend	6-1-2017	735-062-0090(T)	3-20-2017	Repeal	5-1-2017
695-005-0030	5-2-2017	Amend	6-1-2017	735-150-0005	2-22-2017	Amend	4-1-2017
695-005-0040	5-2-2017	Amend	6-1-2017	735-150-0005	3-7-2017	Amend	4-1-2017
695-005-0050	5-2-2017	Amend	6-1-2017	735-150-0010	5-25-2017	Amend	7-1-2017
695-005-0060	5-2-2017	Amend	6-1-2017	735-150-0015	5-25-2017	Amend	7-1-2017
695-010-0020	5-2-2017	Amend	6-1-2017	735-150-0020	5-25-2017	Amend	7-1-2017
695-010-0060	5-2-2017	Amend	6-1-2017	735-150-0027	5-25-2017	Amend	7-1-2017
715-045-0001	1-1-2017	Amend	2-1-2017	735-150-0030	5-25-2017	Amend	7-1-2017
715-045-0007	1-1-2017	Amend	2-1-2017	735-150-0110	5-25-2017	Amend	7-1-2017
715-045-0033	1-1-2017	Amend	2-1-2017	735-150-0120	5-25-2017	Amend	7-1-2017
731-001-0025	5-25-2017	Amend(T)	7-1-2017	735-150-0130	5-25-2017	Amend	7-1-2017
734-005-0015	12-16-2016	Amend	2-1-2017	735-150-0160	5-25-2017	Amend	7-1-2017
734-010-0285	11-28-2016	Adopt	1-1-2017	735-152-0000	5-25-2017	Amend	7-1-2017
734-010-0290	11-28-2016	Amend	1-1-2017	735-152-0005	5-25-2017	Amend	7-1-2017
734-010-0300	11-28-2016	Amend	1-1-2017	735-152-0031	5-25-2017	Amend	7-1-2017
734-010-0320	11-28-2016	Amend	1-1-2017	736-018-0045	4-19-2017	Amend	6-1-2017
734-010-0330	11-28-2016	Amend	1-1-2017	736-040-0100	2-2-2017	Adopt	3-1-2017
734-010-0340	11-28-2016	Amend	1-1-2017	736-040-0110	2-2-2017	Adopt	3-1-2017
734-010-0350	11-28-2016	Repeal	1-1-2017	738-080-0030	4-28-2017	Amend	6-1-2017
734-010-0360	11-28-2016	Amend	1-1-2017	738-124-0020	3-8-2017	Amend(T)	4-1-2017
734-010-0380	11-28-2016	Amend	1-1-2017	738-125-0020	3-8-2017	Amend(T)	4-1-2017
734-050-0105	12-16-2016	Am. & Ren.	2-1-2017	740-200-0010	2-22-2017	Amend	4-1-2017
734-059-0015	11-28-2016	Amend	1-1-2017	740-200-0010	3-7-2017	Amend	4-1-2017
734-059-0200	11-28-2016	Amend	1-1-2017	740-200-0020	2-22-2017	Amend	4-1-2017
734-060-0000	11-28-2016	Amend	1-1-2017	740-200-0020	3-7-2017	Amend	4-1-2017
734-060-0010	11-28-2016	Repeal	1-1-2017	740-200-0040	2-22-2017	Amend	4-1-2017
734-060-0175	11-28-2016	Amend	1-1-2017	740-200-0040	3-7-2017	Amend	4-1-2017
734-060-0180	11-28-2016	Adopt	1-1-2017	740-200-0045	5-23-2017	Amend	7-1-2017
734-060-0190	11-28-2016	Amend	1-1-2017	800-010-0015	1-27-2017	Amend	3-1-2017
734-065-0010	11-28-2016	Amend	1-1-2017	800-010-0035	1-27-2017	Amend	3-1-2017
734-065-0015	11-28-2016	Amend	1-1-2017	800-010-0040	1-27-2017	Amend	3-1-2017

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800-015-0020	1-27-2017	Amend	3-1-2017	811-010-0071	1-6-2017	Amend	2-1-2017
800-020-0015	1-27-2017	Amend	3-1-2017	811-010-0084	1-6-2017	Amend	2-1-2017
800-020-0020	1-27-2017	Amend	3-1-2017	811-010-0084	1-1-2018	Amend	6-1-2017
800-020-0022	1-27-2017	Amend	3-1-2017	811-010-0086	1-1-2018	Amend	6-1-2017
800-025-0060	1-27-2017	Amend	3-1-2017	811-010-0090	1-6-2017	Amend	2-1-2017
801-001-0005	1-4-2017	Amend	2-1-2017	811-010-0093	1-6-2017	Amend	2-1-2017
801-001-0035	1-4-2017	Amend	2-1-2017	811-010-0095	1-6-2017	Amend	2-1-2017
801-005-0010	1-4-2017	Amend	2-1-2017	811-010-0110	1-1-2018	Amend	6-1-2017
801-010-0060	1-4-2017	Amend	2-1-2017	811-035-0001	4-21-2017	Amend	6-1-2017
801-010-0065	1-4-2017	Amend	2-1-2017	812-003-0131	1-1-2017	Amend	2-1-2017
801-010-0080	1-4-2017	Amend	2-1-2017	812-003-0171	1-1-2017	Amend	2-1-2017
801-010-0110	1-4-2017	Amend	2-1-2017	812-003-0221	1-1-2017	Amend	2-1-2017
801-010-0115	1-4-2017	Amend	2-1-2017	813-005-0005	12-14-2016	Amend	1-1-2017
801-010-0120	1-4-2017	Amend	2-1-2017	813-005-0005(T)	12-14-2016	Repeal	1-1-2017
801-010-0130	1-4-2017	Amend	2-1-2017	813-005-0025	12-14-2016	Adopt	1-1-2017
801-010-0340	1-4-2017	Amend	2-1-2017	813-005-0025(T)	12-14-2016	Repeal	1-1-2017
801-010-0345	1-4-2017	Amend	2-1-2017	813-006-0005	12-19-2016	Amend	2-1-2017
801-020-0690	1-4-2017	Amend	2-1-2017	813-006-0005(T)	12-19-2016	Repeal	2-1-2017
801-020-0700	1-4-2017	Amend	2-1-2017	813-006-0010	12-19-2016	Amend	2-1-2017
801-030-0005	1-4-2017	Amend	2-1-2017	813-006-0010(T)	12-19-2016	Repeal	2-1-2017
801-030-0020	1-4-2017	Amend	2-1-2017	813-046-0011	4-19-2017	Amend	6-1-2017
801-040-0020	1-4-2017	Amend	2-1-2017	813-046-0011(T)	4-19-2017	Repeal	6-1-2017
801-040-0030	1-4-2017	Amend	2-1-2017	813-135-0010	3-9-2017	Adopt	4-1-2017
801-040-0050	1-4-2017	Amend	2-1-2017	813-135-0010(T)	3-9-2017	Repeal	4-1-2017
801-040-0090	1-4-2017	Repeal	2-1-2017	813-135-0020	3-9-2017	Adopt	4-1-2017
801-050-0020	1-4-2017	Amend	2-1-2017	813-135-0020(T)	3-9-2017	Repeal	4-1-2017
801-050-0040	1-4-2017	Amend	2-1-2017	813-135-0030	3-9-2017	Adopt	4-1-2017
804-001-0002	7-1-2017	Amend	7-1-2017	813-135-0030(T)	3-9-2017	Repeal	4-1-2017
804-003-0000	2-10-2017	Amend	3-1-2017	813-135-0040	3-9-2017	Adopt	4-1-2017
804-022-0025	2-10-2017	Amend	3-1-2017	813-135-0040(T)	3-9-2017	Repeal	4-1-2017
804-030-0011	2-10-2017	Amend	3-1-2017	813-135-0050	3-9-2017	Adopt	4-1-2017
804-035-0000	2-10-2017	Adopt	3-1-2017	813-135-0050(T)	3-9-2017	Repeal	4-1-2017
804-035-0010	2-10-2017	Amend	3-1-2017	813-135-0060	3-9-2017	Adopt	4-1-2017
804-035-0020	2-10-2017	Amend	3-1-2017	813-135-0060(T)	3-9-2017	Repeal	4-1-2017
804-035-0030	2-10-2017	Amend	3-1-2017	813-240-0005	4-19-2017	Amend	6-1-2017
804-035-0035	2-10-2017	Amend	3-1-2017	813-240-0005(T)	4-19-2017	Repeal	6-1-2017
804-035-0040	2-10-2017	Amend	3-1-2017	818-021-0011	3-1-2017	Amend	3-1-2017
804-040-0000	2-10-2017	Amend	3-1-2017	818-021-0025	3-1-2017	Amend	3-1-2017
804-040-0000	7-1-2017	Amend	7-1-2017	819-005-0005	1-3-2017	Adopt	2-1-2017
804-050-0005	2-10-2017	Amend	3-1-2017	819-020-0015	1-3-2017	Adopt	2-1-2017
804-050-0010	2-10-2017	Amend	3-1-2017	819-020-0020	1-3-2017	Adopt	2-1-2017
804-050-0015	2-10-2017	Amend	3-1-2017	819-020-0035	1-3-2017	Adopt	2-1-2017
806-001-0003	5-15-2017	Amend	6-1-2017	819-020-0045	1-3-2017	Adopt	2-1-2017
806-001-0003	6-8-2017	Amend	7-1-2017	819-020-0055	1-3-2017	Adopt	2-1-2017
808-001-0008	7-1-2017	Amend	7-1-2017	819-020-0065	1-3-2017	Adopt	2-1-2017
808-003-0700	12-19-2016	Amend	2-1-2017	819-020-0075	1-3-2017	Adopt	2-1-2017
808-003-0700(T)	12-19-2016	Repeal	2-1-2017	819-020-0085	1-3-2017	Adopt	2-1-2017
808-003-0710	3-24-2017	Amend	5-1-2017	819-020-0090	1-3-2017	Adopt	2-1-2017
808-005-0020	7-1-2017	Amend	7-1-2017	819-030-0000	1-3-2017	Adopt	2-1-2017
809-010-0001	7-1-2017	Amend	7-1-2017	819-040-0005	1-3-2017	Adopt	2-1-2017
809-010-0025	7-1-2017	Amend	7-1-2017	820-001-0025	5-12-2017	Amend	6-1-2017
811-010-0005	1-6-2017	Amend	2-1-2017	820-010-0520	12-29-2016	Amend	2-1-2017
811-010-0015	1-6-2017	Amend	2-1-2017	820-010-0720	12-29-2016	Amend	2-1-2017
811-010-0025	1-6-2017	Amend	2-1-2017	820-010-1000	5-12-2017	Amend	6-1-2017

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820-010-2000	5-12-2017	Amend	6-1-2017	837-120-0510	2-1-2017	Adopt	3-1-2017
820-010-3000	5-12-2017	Amend	6-1-2017	837-120-0520	2-1-2017	Adopt	3-1-2017
820-010-4000	7-1-2017	Amend	7-1-2017	837-120-0530	2-1-2017	Adopt	3-1-2017
820-020-0035	5-12-2017	Amend	6-1-2017	837-120-0540	2-1-2017	Adopt	3-1-2017
820-025-0005	12-29-2016	Amend	2-1-2017	839-025-0700	1-1-2017	Amend	2-1-2017
820-040-0005	6-13-2017	Amend(T)	7-1-2017	839-025-0700	4-1-2017	Amend	4-1-2017
820-040-0030	5-12-2017	Amend	6-1-2017	839-025-0700	7-1-2017	Amend	7-1-2017
820-080-1000	7-1-2017	Amend	7-1-2017	845-005-0306	5-1-2017	Amend	6-1-2017
824-010-0005	1-1-2017	Amend	1-1-2017	845-005-0412	1-1-2017	Adopt	1-1-2017
824-030-0010	1-1-2017	Amend	1-1-2017	845-006-0500	12-1-2016	Amend	1-1-2017
824-030-0040	1-1-2017	Amend	1-1-2017	845-013-0100	3-1-2017	Amend	4-1-2017
824-035-0005	1-1-2017	Repeal	1-1-2017	845-015-0142	3-1-2017	Adopt	4-1-2017
824-036-0001	1-1-2017	Adopt	1-1-2017	845-025-1015	12-27-2016	Amend	2-1-2017
824-040-0010	1-1-2017	Amend	1-1-2017	845-025-1030	12-27-2016	Amend	2-1-2017
824-050-0010	1-1-2017	Amend	1-1-2017	845-025-1045	12-27-2016	Amend	2-1-2017
824-060-0010	1-1-2017	Amend	1-1-2017	845-025-1060	12-27-2016	Amend	2-1-2017
824-070-0005	1-1-2017	Adopt	1-1-2017	845-025-1060	5-1-2017	Amend	6-1-2017
824-070-0010	1-1-2017	Adopt	1-1-2017	845-025-1090	12-27-2016	Amend	2-1-2017
830-011-0065	1-12-2017	Amend	2-1-2017	845-025-1100	12-27-2016	Amend	2-1-2017
833-020-0081	6-10-2017	Amend	7-1-2017	845-025-1115	12-27-2016	Amend	2-1-2017
833-030-0021	6-10-2017	Amend	7-1-2017	845-025-1160	12-27-2016	Amend	2-1-2017
833-040-0021	6-10-2017	Amend	7-1-2017	845-025-1175	12-27-2016	Amend	2-1-2017
833-040-0041	12-12-2016	Amend(T)	1-1-2017	845-025-1230	12-27-2016	Amend	2-1-2017
833-040-0041	6-12-2017	Amend	7-1-2017	845-025-1360	12-27-2016	Amend	2-1-2017
833-040-0041(T)	6-12-2017	Repeal	7-1-2017	845-025-1410	12-27-2016	Amend	2-1-2017
833-050-0031	1-1-2018	Amend	7-1-2017	845-025-1420	12-27-2016	Amend	2-1-2017
833-050-0041	1-1-2018	Amend	7-1-2017	845-025-1440	12-27-2016	Amend	2-1-2017
833-050-0091	1-1-2018	Amend	7-1-2017	845-025-1450	12-27-2016	Amend	2-1-2017
833-070-0011	7-1-2017	Amend(T)	7-1-2017	845-025-1470	12-27-2016	Amend	2-1-2017
833-075-0050	1-1-2018	Amend	7-1-2017	845-025-2020	12-27-2016	Amend	2-1-2017
833-075-0070	1-1-2018	Amend	7-1-2017	845-025-2030	12-27-2016	Amend	2-1-2017
833-100-0011	1-1-2018	Amend	7-1-2017	845-025-2040	12-27-2016	Amend	2-1-2017
833-100-0012	1-1-2018	Adopt	7-1-2017	845-025-2060	12-27-2016	Amend	2-1-2017
833-100-0021	1-1-2018	Amend	7-1-2017	845-025-2070	1-1-2017	Amend(T)	2-1-2017
833-100-0031	1-1-2018	Repeal	7-1-2017	845-025-2100	12-27-2016	Adopt	2-1-2017
833-100-0041	1-1-2018	Repeal	7-1-2017	845-025-2500	5-1-2017	Adopt	6-1-2017
833-100-0051	1-1-2018	Repeal	7-1-2017	845-025-2510	5-1-2017	Adopt	6-1-2017
833-100-0061	1-1-2018	Repeal	7-1-2017	845-025-2520	5-1-2017	Adopt	6-1-2017
833-100-0071	1-1-2018	Repeal	7-1-2017	845-025-2530	5-1-2017	Adopt	6-1-2017
834-030-0010	1-17-2017	Amend(T)	3-1-2017	845-025-2540	5-1-2017	Adopt	6-1-2017
834-030-0010	4-1-2017	Amend	5-1-2017	845-025-2550	5-1-2017	Adopt	6-1-2017
834-050-0000	1-9-2017	Amend	2-1-2017	845-025-2560	5-1-2017	Adopt	6-1-2017
834-050-0010	1-9-2017	Amend	2-1-2017	845-025-2800	12-27-2016	Amend	2-1-2017
836-005-0405	1-10-2017	Adopt	2-1-2017	845-025-2840	12-27-2016	Amend	2-1-2017
836-010-0135	1-9-2017	Amend	2-1-2017	845-025-2900	12-27-2016	Adopt	2-1-2017
836-010-0140	1-9-2017	Amend	2-1-2017	845-025-2910	12-27-2016	Adopt	2-1-2017
836-011-0000	1-31-2017	Amend(T)	3-1-2017	845-025-3215	12-27-2016	Amend	2-1-2017
836-011-0000	4-20-2017	Amend	6-1-2017	845-025-3250	1-1-2017	Amend(T)	2-1-2017
836-011-0000	4-27-2017	Amend	6-1-2017	845-025-3255	1-1-2017	Adopt(T)	2-1-2017
836-011-0000(T)	4-20-2017	Repeal	6-1-2017	845-025-3260	12-27-2016	Amend	2-1-2017
836-011-0000(T)	4-27-2017	Repeal	6-1-2017	845-025-3300	12-27-2016	Adopt	2-1-2017
836-011-0030	12-21-2016	Adopt	2-1-2017	845-025-3310	12-27-2016	Adopt	2-1-2017
836-014-0400	4-14-2017	Repeal	5-1-2017	845-025-3500	12-27-2016	Amend	2-1-2017
836-031-0605	12-21-2016	Adopt	2-1-2017	845-025-3510	12-27-2016	Adopt	2-1-2017
836-053-0015	3-9-2017	Amend	4-1-2017	845-025-3600	12-27-2016	Adopt	2-1-2017

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845-025-5350	12-27-2016	Amend	2-1-2017	852-070-0010	2-14-2017	Amend	3-1-2017
845-025-5500	12-27-2016	Amend	2-1-2017	852-070-0010	3-14-2017	Amend	4-1-2017
845-025-5540	12-27-2016	Amend	2-1-2017	855-007-0060	2-23-2017	Amend	4-1-2017
845-025-5700	12-27-2016	Amend	2-1-2017	855-019-0120	12-14-2016	Amend	1-1-2017
845-025-5700	3-3-2017	Amend(T)	4-1-2017	855-019-0123	2-23-2017	Adopt	4-1-2017
845-025-5700(T)	12-27-2016	Repeal	2-1-2017	855-019-0450	12-14-2016	Adopt	1-1-2017
845-025-7000	12-27-2016	Amend	2-1-2017	855-019-0450(T)	12-14-2016	Repeal	1-1-2017
845-025-7020	12-27-2016	Amend	2-1-2017	855-019-0455	12-14-2016	Adopt	1-1-2017
845-025-7030	12-27-2016	Amend	2-1-2017	855-019-0455(T)	12-14-2016	Repeal	1-1-2017
845-025-7060	12-27-2016	Amend	2-1-2017	855-019-0460	12-14-2016	Adopt	1-1-2017
845-025-7520	12-27-2016	Amend	2-1-2017	855-019-0460(T)	12-14-2016	Repeal	1-1-2017
845-025-7580	12-27-2016	Amend	2-1-2017	855-041-1001	2-23-2017	Amend	4-1-2017
845-025-7700	12-27-2016	Amend	2-1-2017	855-041-1010	2-23-2017	Amend	4-1-2017
845-025-7750	12-27-2016	Amend	2-1-2017	855-041-1036	2-23-2017	Amend	4-1-2017
845-025-8040	12-27-2016	Amend	2-1-2017	855-041-1045	2-23-2017	Amend	4-1-2017
845-025-8060	12-27-2016	Amend	2-1-2017	855-041-1046	2-23-2017	Adopt	4-1-2017
845-025-8520	12-27-2016	Amend	2-1-2017	855-041-2340	12-14-2016	Adopt	1-1-2017
845-025-8560	12-27-2016	Amend	2-1-2017	855-041-2340(T)	12-14-2016	Repeal	1-1-2017
845-025-8750	12-27-2016	Adopt	2-1-2017	855-041-4100	2-23-2017	Amend	4-1-2017
847-003-0200	7-1-2017	Amend	2-1-2017	855-041-4120	2-23-2017	Amend	4-1-2017
847-010-0066	4-7-2017	Amend	5-1-2017	855-041-5005	2-23-2017	Amend	4-1-2017
847-035-0030	1-6-2017	Amend	2-1-2017	855-044-0001	2-23-2017	Amend	4-1-2017
847-070-0005	1-6-2017	Amend	2-1-2017	855-044-0030	2-23-2017	Amend	4-1-2017
848-005-0010	6-14-2017	Amend(T)	7-1-2017	855-080-0021	12-14-2016	Amend	1-1-2017
848-005-0010	7-1-2017	Amend	4-1-2017	855-080-0105	2-23-2017	Amend	4-1-2017
851-010-0000	1-1-2017	Adopt	1-1-2017	856-010-0014	5-2-2017	Amend(T)	6-1-2017
851-010-0005	1-1-2017	Amend	1-1-2017	856-010-0015	4-7-2017	Amend	5-1-2017
851-010-0010	1-1-2017	Amend	1-1-2017	856-030-0040	11-22-2016	Amend	1-1-2017
851-010-0015	1-1-2017	Amend	1-1-2017	858-010-0034	2-16-2017	Amend	4-1-2017
851-010-0020	1-1-2017	Repeal	1-1-2017	858-010-0075	5-24-2017	Amend	7-1-2017
851-010-0024	1-1-2017	Amend	1-1-2017	858-020-0055	3-20-2017	Amend	5-1-2017
851-010-0035	1-1-2017	Amend	1-1-2017	859-010-0005	11-18-2016	Amend	1-1-2017
851-050-0001	3-1-2017	Amend	4-1-2017	859-510-0005	12-13-2016	Amend	1-1-2017
851-050-0004	4-15-2017	Amend(T)	5-1-2017	860-021-0407	5-30-2017	Adopt	7-1-2017
851-052-0000	3-1-2017	Amend	4-1-2017	860-024-0010	2-21-2017	Amend	4-1-2017
851-052-0010	3-1-2017	Amend	4-1-2017	860-032-0060	2-7-2017	Amend	3-1-2017
851-052-0020	3-1-2017	Amend	4-1-2017	860-032-0610	11-22-2016	Am. & Ren.	1-1-2017
851-052-0030	3-1-2017	Amend	4-1-2017	860-032-0620	11-22-2016	Am. & Ren.	1-1-2017
851-052-0040	3-1-2017	Amend	4-1-2017	860-032-0630	11-22-2016	Am. & Ren.	1-1-2017
851-052-0050	3-1-2017	Adopt	4-1-2017	860-032-0640	11-22-2016	Renumber	1-1-2017
851-052-0060	3-1-2017	Adopt	4-1-2017	860-032-0650	11-22-2016	Renumber	1-1-2017
851-052-0100	3-1-2017	Amend	4-1-2017	860-032-0660	11-22-2016	Renumber	1-1-2017
851-056-0026	4-15-2017	Amend(T)	5-1-2017	860-032-0670	11-22-2016	Renumber	1-1-2017
852-005-0005	7-1-2017	Amend	3-1-2017	860-033-0005	12-2-2016	Amend(T)	1-1-2017
852-005-0005	7-1-2017	Amend	4-1-2017	860-033-0005	5-31-2017	Amend	7-1-2017
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852-010-0080	3-14-2017	Amend	4-1-2017	860-033-0030	5-31-2017	Amend	7-1-2017
852-010-0080	4-26-2017	Amend(T)	6-1-2017	860-033-0046	12-2-2016	Amend(T)	1-1-2017
852-020-0045	2-14-2017	Amend	3-1-2017	860-033-0046	5-31-2017	Amend	7-1-2017
852-020-0045	3-14-2017	Amend	4-1-2017	860-033-0050	12-2-2016	Amend(T)	1-1-2017
852-050-0001	2-14-2017	Amend	3-1-2017	860-033-0050	5-31-2017	Amend	7-1-2017
852-050-0001	3-14-2017	Amend	4-1-2017	860-033-0110	5-31-2017	Amend	7-1-2017
852-050-0025	2-14-2017	Amend	3-1-2017	860-033-0530	5-31-2017	Amend	7-1-2017
852-050-0025	3-14-2017	Amend	4-1-2017	860-036-0001	1-24-2017	Repeal	3-1-2017

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860-036-1250	1-24-2017	Adopt	3-1-2017	860-036-2110	1-24-2017	Adopt	3-1-2017
860-036-1260	1-24-2017	Adopt	3-1-2017	860-036-2120	1-24-2017	Adopt	3-1-2017
860-036-1270	1-24-2017	Adopt	3-1-2017	860-036-2130	1-24-2017	Adopt	3-1-2017
860-036-1300	1-24-2017	Adopt	3-1-2017	860-036-2140	1-24-2017	Adopt	3-1-2017
860-036-1310	1-24-2017	Adopt	3-1-2017	860-036-2150	1-24-2017	Adopt	3-1-2017
860-036-1320	1-24-2017	Adopt	3-1-2017	860-036-2160	1-24-2017	Adopt	3-1-2017
860-036-1330	1-24-2017	Adopt	3-1-2017	860-036-2170	1-24-2017	Adopt	3-1-2017
860-036-1350	1-24-2017	Adopt	3-1-2017	860-036-2200	1-24-2017	Adopt	3-1-2017
860-036-1360	1-24-2017	Adopt	3-1-2017	860-036-2210	1-24-2017	Adopt	3-1-2017
860-036-1370	1-24-2017	Adopt	3-1-2017	860-036-2220	1-24-2017	Adopt	3-1-2017
860-036-1400	1-24-2017	Adopt	3-1-2017	860-036-2230	1-24-2017	Adopt	3-1-2017
860-036-1410	1-24-2017	Adopt	3-1-2017	860-036-2300	1-24-2017	Adopt	3-1-2017
860-036-1420	1-24-2017	Adopt	3-1-2017	860-036-2310	1-24-2017	Adopt	3-1-2017
860-036-1430	1-24-2017	Adopt	3-1-2017	860-036-2350	1-24-2017	Adopt	3-1-2017
860-036-1440	1-24-2017	Adopt	3-1-2017	860-036-2360	1-24-2017	Adopt	3-1-2017
860-036-1450	1-24-2017	Adopt	3-1-2017	860-036-2370	1-24-2017	Adopt	3-1-2017
860-036-1500	1-24-2017	Adopt	3-1-2017	860-036-2380	1-24-2017	Adopt	3-1-2017
860-036-1510	1-24-2017	Adopt	3-1-2017	860-036-2390	1-24-2017	Adopt	3-1-2017
860-036-1520	1-24-2017	Adopt	3-1-2017	860-036-2400	1-24-2017	Adopt	3-1-2017
860-036-1530	1-24-2017	Adopt	3-1-2017	860-036-2410	1-24-2017	Adopt	3-1-2017
860-036-1540	1-24-2017	Adopt	3-1-2017	860-087-0001	11-22-2016	Adopt	1-1-2017
860-036-1550	1-24-2017	Adopt	3-1-2017	860-087-0010	11-22-2016	Adopt	1-1-2017
860-036-1560	1-24-2017	Adopt	3-1-2017	860-087-0030	11-22-2016	Adopt	1-1-2017
860-036-1570	1-24-2017	Adopt	3-1-2017	860-087-0040	11-22-2016	Adopt	1-1-2017
860-036-1580	1-24-2017	Adopt	3-1-2017	860-100-0001	11-22-2016	Adopt	1-1-2017
860-036-1590	1-24-2017	Adopt	3-1-2017	860-100-0005	11-22-2016	Adopt	1-1-2017
860-036-1600	1-24-2017	Adopt	3-1-2017	875-010-0031	12-12-2016	Suspend	1-1-2017
860-036-1610	1-24-2017	Adopt	3-1-2017	875-010-0031	5-16-2017	Amend	7-1-2017
860-036-1620	1-24-2017	Adopt	3-1-2017	875-010-0045	12-12-2016	Amend(T)	1-1-2017
860-036-1630	1-24-2017	Adopt	3-1-2017	875-010-0045	12-13-2016	Amend	1-1-2017
860-036-1640	1-24-2017	Adopt	3-1-2017	875-010-0045	12-14-2016	Amend(T)	1-1-2017
860-036-1650	1-24-2017	Adopt	3-1-2017	875-010-0045	1-12-2017	Amend	2-1-2017
860-036-1660	1-24-2017	Adopt	3-1-2017	875-010-0045	5-16-2017	Amend	7-1-2017
860-036-1670	1-24-2017	Adopt	3-1-2017	875-010-0090	12-12-2016	Amend	1-1-2017
860-036-1680	1-24-2017	Adopt	3-1-2017	875-010-0090	1-12-2017	Amend	2-1-2017
860-036-1690	1-24-2017	Adopt	3-1-2017	875-015-0030	12-12-2016	Amend(T)	1-1-2017
860-036-1700	1-24-2017	Adopt	3-1-2017	875-015-0030	5-16-2017	Amend	7-1-2017
860-036-1710	1-24-2017	Adopt	3-1-2017	875-030-0010	12-13-2016	Amend	1-1-2017
860-036-1720	1-24-2017	Adopt	3-1-2017	875-030-0010	1-12-2017	Amend	2-1-2017
860-036-1800	1-24-2017	Adopt	3-1-2017	875-030-0050	12-13-2016	Amend	1-1-2017
860-036-1810	1-24-2017	Adopt	3-1-2017	875-030-0050	1-12-2017	Amend	2-1-2017
860-036-1820	1-24-2017	Adopt	3-1-2017	877-001-0009	1-23-2017	Amend	3-1-2017
860-036-1830	1-24-2017	Adopt	3-1-2017	877-015-0108	1-23-2017	Amend	3-1-2017
860-036-1840	1-24-2017	Adopt	3-1-2017	877-020-0009	1-23-2017	Amend	3-1-2017
860-036-1850	1-24-2017	Adopt	3-1-2017	877-020-0010	1-23-2017	Amend	3-1-2017
860-036-1900	1-24-2017	Adopt	3-1-2017	877-020-0012	1-23-2017	Amend	3-1-2017
860-036-1910	1-24-2017	Adopt	3-1-2017	918-001-0012	4-1-2017	Adopt	5-1-2017
860-036-1920	1-24-2017	Adopt	3-1-2017	918-001-0014	4-1-2017	Adopt	5-1-2017
860-036-1930	1-24-2017	Adopt	3-1-2017	918-001-0016	4-1-2017	Adopt	5-1-2017
860-036-1940	1-24-2017	Adopt	3-1-2017	918-001-0034	4-1-2017	Amend	5-1-2017
860-036-1950	1-24-2017	Adopt	3-1-2017	918-001-0300	4-1-2017	Adopt	5-1-2017
860-036-2000	1-24-2017	Adopt	3-1-2017	918-001-0310	4-1-2017	Adopt	5-1-2017
860-036-2010	1-24-2017	Adopt	3-1-2017	918-098-1305	1-19-2017	Amend(T)	3-1-2017
860-036-2020	1-24-2017	Adopt	3-1-2017	918-098-1325	1-19-2017	Amend(T)	3-1-2017
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918-282-0475	2-1-2017	Adopt(T)	3-1-2017	918-530-0020	1-19-2017	Suspend	3-1-2017
918-308-0000	1-1-2017	Amend	2-1-2017	918-530-0040	1-19-2017	Suspend	3-1-2017
918-308-0010	1-1-2017	Amend	2-1-2017	918-530-0050	1-19-2017	Suspend	3-1-2017
918-308-0160	1-1-2017	Amend	2-1-2017	918-530-0060	1-19-2017	Suspend	3-1-2017
918-460-0015	5-2-2017	Amend(T)	6-1-2017	918-530-0070	1-19-2017	Suspend	3-1-2017
918-500-0450	1-19-2017	Amend(T)	3-1-2017	918-530-0080	1-19-2017	Suspend	3-1-2017
918-525-0000	1-19-2017	Amend(T)	3-1-2017	918-530-0090	1-19-2017	Suspend	3-1-2017
918-525-0005	1-19-2017	Amend(T)	3-1-2017	918-530-0100	1-19-2017	Suspend	3-1-2017
918-525-0015	1-19-2017	Amend(T)	3-1-2017	918-530-0110	1-19-2017	Suspend	3-1-2017
918-525-0020	1-19-2017	Amend(T)	3-1-2017	918-530-0120	1-19-2017	Suspend	3-1-2017
918-525-0035	1-19-2017	Amend(T)	3-1-2017	918-530-0310	1-19-2017	Suspend	3-1-2017
918-525-0040	1-19-2017	Amend(T)	3-1-2017	918-530-0320	1-19-2017	Suspend	3-1-2017
918-525-0042	1-19-2017	Amend(T)	3-1-2017	918-530-0340	1-19-2017	Suspend	3-1-2017
918-525-0045	1-19-2017	Suspend	3-1-2017	918-550-0000	2-1-2017	Amend(T)	3-1-2017
918-525-0055	1-19-2017	Suspend	3-1-2017	918-550-0010	2-1-2017	Amend(T)	3-1-2017
918-525-0060	1-19-2017	Amend(T)	3-1-2017	918-550-0020	2-1-2017	Adopt(T)	3-1-2017
918-525-0065	1-19-2017	Amend(T)	3-1-2017	918-550-0030	2-1-2017	Adopt(T)	3-1-2017
918-525-0070	1-19-2017	Amend(T)	3-1-2017	918-550-0040	2-1-2017	Adopt(T)	3-1-2017
918-525-0080	1-19-2017	Amend(T)	3-1-2017	918-550-0100	2-1-2017	Amend(T)	3-1-2017
918-525-0090	1-19-2017	Amend(T)	3-1-2017	918-550-0120	2-1-2017	Amend(T)	3-1-2017
918-525-0100	1-19-2017	Amend(T)	3-1-2017	918-550-0140	2-1-2017	Amend(T)	3-1-2017
918-525-0210	1-19-2017	Amend(T)	3-1-2017	918-550-0160	2-1-2017	Suspend	3-1-2017
918-525-0220	1-19-2017	Amend(T)	3-1-2017	918-550-0180	2-1-2017	Suspend	3-1-2017
918-525-0260	1-19-2017	Amend(T)	3-1-2017	918-550-0200	2-1-2017	Amend(T)	3-1-2017
918-525-0270	1-19-2017	Amend(T)	3-1-2017	918-550-0600	2-1-2017	Amend(T)	3-1-2017
918-525-0310	1-19-2017	Amend(T)	3-1-2017	943-014-0200	5-17-2017	Amend	7-1-2017
918-525-0320	1-19-2017	Amend(T)	3-1-2017	943-014-0205	5-17-2017	Amend	7-1-2017
918-525-0325	1-19-2017	Suspend	3-1-2017	945-030-0030	4-5-2017	Amend	5-1-2017
918-525-0330	1-19-2017	Amend(T)	3-1-2017	951-002-0000	5-2-2017	Amend	6-1-2017
918-525-0350	1-19-2017	Amend(T)	3-1-2017	951-002-0001	5-2-2017	Amend	6-1-2017
918-525-0370	1-19-2017	Suspend	3-1-2017	951-002-0005	5-2-2017	Amend	6-1-2017
918-525-0410	1-19-2017	Amend(T)	3-1-2017	951-002-0010	5-2-2017	Amend	6-1-2017
918-525-0420	1-19-2017	Amend(T)	3-1-2017	951-002-0020	5-2-2017	Amend	6-1-2017
918-525-0430	1-19-2017	Amend(T)	3-1-2017	951-007-0000	5-2-2017	Adopt	6-1-2017
918-525-0440	1-19-2017	Amend(T)	3-1-2017	951-007-0001	5-2-2017	Adopt	6-1-2017
918-525-0450	1-19-2017	Amend(T)	3-1-2017	951-007-0005	5-2-2017	Adopt	6-1-2017
918-525-0460	1-19-2017	Suspend	3-1-2017	951-007-0010	5-2-2017	Adopt	6-1-2017
918-525-0510	1-19-2017	Amend(T)	3-1-2017	951-007-0020	5-2-2017	Adopt	6-1-2017
918-525-0520	1-19-2017	Amend(T)	3-1-2017	966-100-0900	3-14-2017	Adopt	4-1-2017
918-530-0005	1-19-2017	Suspend	3-1-2017	976-002-0040	2-13-2017	Amend	3-1-2017